REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JUNE 3, 2025

AGENDA

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

A. OPENING

1. Silent Invocation
2. Pledge of Allegiance
3. Roll Call
4. Public Comments on Consent Agenda Items Only

B. CONSENT AGENDA

5. Approval of Minutes
    a. May 20, 2025 - Regular City Council Meeting
6. Bid Awards and Contract Items
    a. Approval to award ITB #25-12 to East Coast Marine Construction & Design for Causeway Park Renovations
7. Approval of Renewal No. 2 of the Interlocal Agreement with the Utilities Commission of New Smyrna Beach for Potable Water and Reclaimed Services
8. Resolution No. 25-30 - Budget Transfer for 413 Herbert Street Purchase - Depot Park

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

D. COMMENTS AND ADDITIONAL ITEMS

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

E. SPECIAL REPORTS

12. Report from KemperSports on the Cypress Head Golf
13. Port Orange Community Trust Annual Update

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

14. Golf Advisory Board Report
15. Parks and Recreation Board Appointments (x2)
16. Environmental Advisory Board Appointment

G. PUBLIC HEARING

17. First Reading - Ordinance No. 2025-16 - Rezoning/422 Jefferson Avenue

H. REGULAR AGENDA

18. FY 2025-2026 Budget Discussions (Preliminary Capital Improvement Plan, Capital Outlay and Fleet)

I. COUNCIL COMMITTEE REPORTS

19. City Council Committee Reports
    a. Volusia Flagler TPO - Councilman Jonathan Foley
    b. Fire Pension Board - Councilman Jonathan Foley
    c. Police Pension Board - Councilman Lance Green
    d. General Employee's Pension Board - Mayor Scott Stiltner

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.

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
May 20, 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 Pastor Joshua Owen of Spruce Creek Presbyterian Church

Pledge of Allegiance

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

SPECIAL REPORTS

4. Causeway Docks project update

Susan Lovallo, Parks and Recreation Director introduced Shailesh Patel with Dredging and Marine Consultants, LLC.

Mr. Patel provided a presentation of the Causeway Park Boat Ramp and Parking Lot Improvements, detailing the design and answered Council Members' questions.

Ms. Lovallo, Mr. Patel, and Council Members discussed the project, to include specifics on the sheet piling, slope of the loading ramp, resurfacing of the parking lot, funding, obtaining supplies, construction timeframes, and safety concerns to include signage at the docks to prohibit cleaning of fish on the docks, which creates a slipping hazard.

Ms. Lovallo also advised the contract to award the bid to a contractor will come before them at the next Council meeting. At that time, they can get a realistic schedule to move forward. Staff will be placing signage with QR codes in the Causeway Park, so anyone can scan it to get updates on the project at any time.

Eugene T. Healey III, resident, talked about safety hazards with only having one dock available at this time. Mr. Healy suggested contract incentives for the contractors to get the construction job done quickly.

Lastly, Mayor Stiltner further clarified the City staff's diligence to get this moving and how all options were looked at prior to choosing this project.

5. Public Comments on Consent Agenda Items Only

There were none.

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

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

STATE OF THE CITY

The State of the City Video presentation was displayed for all to view.

Council Members commended the positive developments featured in the State of the City video, noting highlights such as the clean audit reflecting strong financial health, stable staffing levels, progress on the Parks Bond Initiative, stormwater infrastructure improvements, enhanced transparency, ongoing city maintenance, and the dedication and hard work of City staff.

Lastly, Mayor Stiltner mentioned that on July 1, 2025, the City should find out where they stand with Tallahassee regarding approval of some major funding that was requested for some of the larger projects throughout the City.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Larry Powers with the Railroad Society for the Port Orange Depot thanked Council Members for the recent approval to purchase the extra property for the Port Orange Depot. He mentioned they are trying to make the Port Orange Depot self-sustaining and have been receiving donations as well. Mr. Powers also expressed his appreciation to City staff for their help when they needed it.

Herb Stewartson, a board member with the Port Orange/South Daytona Chamber of Commerce, expressed the boards appreciation for Council's support and discussed upcoming events to include a weekly Chamber Golf Swing happening on Wednesdays, a ribbon cutting at the new Splash Salon, coffee and connections at Copperline Coffee, and the Annual Chamber Golf Tournament at Cypress Head.

Barbara Ann-Heegan, President and CEO of the Port Orange/South Daytona Chamber of Commerce, expressed her gratitude to the job fair and thanked Councilman Green for attending the event and offering his support for next year's event. Ms. Heegan also thanked Robin Fenwick and Mayor Scott Stiltner for their support, and Mike Springer for his marketing and promotion assistance.

Robert Reinhagen, resident, expressed his concerns regarding construction and wetlands in relation to the annexation of Vintage Acres which passed first reading at the last meeting on May 6, 2025. He also requests the Land Development Code be revised to declare that wetlands and ponds are not buildable acreage.

Sophia Marie-Norwood with Tobacco-Free Volusia spoke on the statistics of tobacco use and nicotine. Ms. Marie-Norwood invited the Council Members to their next meeting in August and provided contact information for anyone looking to get support with tobacco/nicotine cessation. Additionally, Ms. Marie-Norwood invited the youth, ages 12-17 to join their SWAT Team, Students Working Against Tobacco.

Kathleen Tarnow, resident, spoke on the flooding in Sugar Forest and asked for updates on drainage projects in the area.

Don Drogowski, resident, spoke about the flooding along Spruce Creek Road and Central Park Blvd. as well as the flood factor modeling with the National Association of Realtors and Insurance.

COMMENTS AND ADDITIONAL ITEMS

10. Council Members

Councilman Green advised a golf course worker, Dennis Pickevance, passed away in April, and spoke on his work ethic. Councilman Green received a concern from a resident regarding the Airport Road Park and the cleanliness of the facility. When he asked staff about the concern, he learned of vandalism happening often in the parks. Staff advised him that cameras have been set in place and Councilman Green encourages parents to talk to their kids in an effort to help end the vandalism.

Councilman Green pointed out that the Allen Green Center purchase was approved in the consent agenda tonight, and suggests the City look at how the funds will be utilized. Additionally, Councilman Green expressed his continuing concerns with the County's non-emergency line and feels as though residents aren't getting the response they deserve.

Lastly, Councilman Green talked about the emergency utility number on the City's website and commented on the job fair.

Councilman Goepfert spoke on the fluoride bill that was signed by the Governor and confirmed as of July 1, 2025, fluoride will no longer be in the City's water supply.

City Attorney Jones mentioned a Resolution will come forward on the fluoride topic to adhere to the newly passed law.

Councilman Foley advised he will be out of town for the next Council meeting and suggested everyone be mindful of what Memorial Day weekend is for and to be safe.

Mayor Stiltner spoke about a recent tragic situation that occurred in our City a couple of weeks ago. He praised and thanked the emergency personnel who responded to the scene so quickly and efficiently. Mayor Stiltner also talked about information being added to he City's website regarding stormwater projects and updates as the projects progress. Lastly, Mayor Stiltner briefly discussed the Transform 386 Program and FEMA, and advised the citizens to reach out to City staff for updates and questions they may have.

11. City Attorney

There was nothing further.

12. City Manager

Mr. Clark confirmed there is a page dedicated to stormwater on the City's website to provide updates, links about different topics of the stormwater system, how stormwater works, and a link to the County's website with County specific details.

Mr. Clark advised the utilities emergency line has been relocated on the website, so the

phone number is easier to find when searched. Mr. Clark expressed his appreciation for the feedback and ideas from Council members to help make things better on the new stormwater page and suggested citizens contact the City and if there's something on the City's website that is hard to find or information they'd like to see.

The City is applying for funds through the Transform 386 program for the Sugar Forest, Pepper Hill, Sleepy Hollow, Portona, and Powers Avenue areas. Mr. Clark touched on the projects and funding from the State Legislature as well as Resilient Florida and advised the City should find out in August if the funds will be received through Transform 386.

Councilman Goepfert briefly talked about the website updates and expressed his appreciation.

Mr. Clark mentioned the City will be bringing some recommendations to Council in June that will cover construction projects and funding, and advised the community meetings to cover stormwater are anticipated to start the week of June 20th.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Citizen Advisory Committee for TPO

Bobby Ball, CAC for the TPO, provided an update to include the long-range transportation plan, mentioning it is nearing completion. Additionally, there is a virtual workshop on June 2, 2025, that Council is welcome to join. The information on the workshop is on their website. Lastly, Mr. Ball spoke about the TIP 5-year program with the DOT mentioning three of the six projects are in Port Orange.

14. Volusia Growth Management Commission Member Appointment

Member Debbie Conners is seeking re-appointment.

> Motion to re-appoint Debbie Conners to the Volusia Growth Management Commission was made by Councilman Jonathan Foley and Seconded by Councilman Shawn Goepfert.

Mayor Stiltner requested to have Ms. Conners to provide an update periodically to Council.

Mr. Clark advised it would be efficient to have the update annually and Ms. Connors can discuss what's going on regionally as well.

> Motion carried unanimously by voice vote.

15. Fire Pension Board Appointment - Council Appointment

Motion to nominate Michael Russin to the Fire Pension Board was made by Councilman Shawn Goepfert and Seconded by Councilman Lance Green.

Mr. Russin addressed Council expressing his interest to serve on the board and touched on his skill set and background.

Councilman Foley appreciates Mr. Russin's interest and background. Councilman Foley mentioned he would be a good fit with his financial background.

Council Members expressed their appreciation for his interest and willingness to serve.

Motion carried unanimously by voice vote.

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

City Attorney Matt 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 adopt Ordinance No. 2025-05 was made by Councilman Jonathan Foley and Seconded by Councilman Shawn Goepfert. Motion carried unanimously by roll call vote.

17. Capital Finance Items

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

City Attorney 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 adopt Ordinance No. 2025-15 was made by Councilman Jonathan Foley and Seconded by Councilman Lance Green. Motion carried unanimously by roll call vote.

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

Mark Simpson, Finance Director introduced Resolution No. 25-28.

Motion to adopt Resolution No. 25-28 was made by Councilman Shawn Goepfert and Seconded by Councilman Jonathan Foley. Motion carried unanimously by roll call vote.

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

Mr. Simpson introduced Resolution No. 25-29.

Motion to adopt Resolution No. 25-29 was made by Councilman Jonathan Foley and Seconded by Councilman Shawn Goepfert. Motion carried unanimously by roll call vote.

COUNCIL COMMITTEE REPORTS

18. City Council Committee Reports

a. First Step Shelter - Councilman Shawn Goepfert

Councilman Goepfert provided an update on the First Step Shelter. The shelter has received funding from United Way, and they are getting ready to celebrate their 1,000th resident that they have placed, and also spoke about the funding of the program.

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

Councilman Goepfert mentioned the Port Orange/South Daytona Chamber of Commerce held a member reception and spoke about the opportunities they provide to help people who have been incarcerated to find jobs. Additionally, the annual fund-raiser for the Chamber's Golf Tournament is on May 31, 2025.

ADJOURNMENT - 8:30 p.m.

_____
Mayor Scott Stiltner

Attest:

_____
Robin Fenwick, MMC
City Clerk

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (B6a) Approval to award ITB #25-12 to East Coast Marine Construction & Design for Causeway Park Renovations

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the award of ITB #25-12 to East Coast Marine Construction & Design for an amount not to exceed $1,650,695.95; authorize an unforeseen conditions allowance (contingency) in an amount not to exceed $165,069; and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: The Parks & Recreation Department is requesting Council approval to award ITB #25-12 to East Coast Marine Construction & Design for the base bid amount of $1,650,695.95 and authorize an unforeseen conditions allowance (contingency) of $165,069.00.

ITB #25-12 involves the demolition of existing ramps and docks on the south side of the Causeway Park, replacing them with new ramps and docks that are more resilient to extreme high tides and tropical activity. The scope also includes repaving and striping the existing parking lot and is expected to take up to 12 months for construction. The design was provided by Dredging and Marine Consultants.

This project is budgeted in the FY25 budget and received $1,200,000.00 from Florida Inland Navigation and Volusia ECHO grants.



Conceptual photo provided by DMC engineers.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	East Coast Marine Construction and Design, Inc. EJCDC Agreement ITB 25-12 Causeway Boat Ramp and Park Improvements - ENTIRE DOCUMENT	East Coast Marine Construction and Design, Inc. EJCDC Agreement ITB 25-12 Causeway Boat Ramp and Park Improvements - ENTIRE DOCUMENT.pdf
2.	ITB 25-12 Notice of Intent To Award FINAL (5.12.2025)	ITB 25-12 Notice of Intent To Award FINAL (5.12.2025).pdf
3.	ITB 25-12 Bid Tabulation FINAL (5.12.2025)	ITB 25-12 Bid Tabulation FINAL (5.12.2025).pdf
4.	ITB 25-12 Causeway Boat Ramp and Park Improvements FINAL (3.27.2025)	ITB 25-12 Causeway Boat Ramp and Park Improvements FINAL (3.27.2025).pdf
5.	ITB 25-12 Addendum No.1 FINAL (4.16.2025)	ITB 25-12 Addendum No.1 FINAL (4.16.2025).pdf
6.	Final presentation CCP	Final presentationCCP .pdf
7.	ECMCD Sunbiz	ECMCD Sunbiz.pdf
8.	ITB 25-12 East Coast Marine Construction & Design bid submittal	ITB 25-12 East Coast Marine Construction & Design bid submittal.pdf
9.	ECMCD Signed Leased	ECMCD Signed Leased

	Employee_Workmans Comp_Affidavits	Employee_Workmans Comp_Affidavits.pdf

Susan Lovallo	Created/Initiated - 5/12/2025
Susan Lovallo	Approved - 5/12/2025
Mark Simpson	Approved - 5/14/2025
Matthew Jones	Approved - 5/29/2025
Wayne Clark	Final Approval - 5/29/2025

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

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and **East Coast Marine Construction & Design, Inc.,** 150 South Palmetto Avenue, Suite 201, Daytona Beach, Florida 32114 ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

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

Project involves the complete removal of the existing concrete boat ramp, four timber access dock structures, four aluminum gangways, four floating dock systems, and the corresponding piles supporting the floating dock systems. The scope of work also includes the supply and installation of a new reinforced concrete boat ramp, three fixed reinforced concrete access docks, one timber access dock, four aluminum gangways, and four concrete floating dock systems, along with the necessary concrete piles for the floating dock systems. Additionally, the project includes milling and paving the existing asphalt road and parking area, as well as installing twenty-two bumper guards (wheel stops), four bollards, pavement markings, and an environmental informational kiosk with environmental signs and a monofilament bin, as specified in the construction plans and technical specifications provided in the bid package. This project is to be in compliance with state and federal regulation, and requires mandatory vibration monitoring, as outlined in construction plans and technical specifications.

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ARTICLE 2—THE PROJECT

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

ITB 25-12 Causeway Boat Ramp and Park Improvements.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, **Curtis N. Todd, P.E.** ("Engineer") **of Dredging & Marine Consultants,** and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned

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to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within **375** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

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

1. *Substantial Completion:* Contractor shall pay Owner $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

3. Deleted in its entirety.

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

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

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C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

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

A. Deleted in its entirety.

B. For all Unit Price Work in accordance with Paragraph 13.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

Unit Price Work					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Price**
See Exhibit No. 1 Contractor's Bid Schedule.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					$1,650,695.95

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

C. Deleted in its entirety.

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

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions

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(and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

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

        1) Deleted in its entirety.

    b. Deleted in its entirety.

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

6.03 *Final Payment*

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

6.04 *Consent of Surety*

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

6.05 *Interest* Deleted in its entirety.

A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Agreement (pages 1 to 30, inclusive).
2. Bonds:
    a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Project Technical Specifications, on file with Project Engineer, Curtis Todd (pages 1 to 35, inclusive).
6. Construction and Survey Drawings, on file with Project Engineer, Curtis Todd (pages 1 to 25, inclusive).
7. Addendum No. 1 dated April 16, 2025 (pages 1 to 2, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
    a. Exhibit No. 1 Contractor's Schedule of Unit Pricing (page 1, inclusive).

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b. Exhibit No. 2 Contractor's Submittal (pages 1 to 53, inclusive, not attached, on file with the office of the City Clerk).

c. Exhibit No. 3 Composite Exhibit No. 3 City's ITB 25-12 Causeway Boat Ramp and Park Improvements (pages 1 to 336, not attached, on file with office of the City Clerk).

d. Exhibit No. 4 General Decision Number FL20250232 dated 03/14/2025 Davis-Bacon Wage Determination (pages 1 to 6, inclusive).

e. Exhibit No. 5 Community Development Block Grant Program ("CDBG") Operating & Procedures Manual (pages 1 to 13, inclusive).

f. Exhibit No. 6 U.S. Department of Housing and Urban Development ("HUD") Supplementary Conditions to the Construction Contract (pages 1 to 10, inclusive).

g. Exhibit No. 7 Geotechnical Evaluation dated 12/6/23 (pages 1 to 17, inclusive).

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

a. Notice to Proceed.

b. Work Change Directives.

c. Change Orders.

d. Field Orders.

e. Warranty Bond, if any.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the

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Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

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

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

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

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

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

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3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

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

B. Any reference to Supplementary Conditions throughout this document, the C-520 Agreement between Owner and Contractor for Construction Contract (2018), and the EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), are hereby deleted in their entirety.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

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

9.02 *Successors and Assigns*

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

9.03 *Severability*

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

9.04 *No-Damage-for-Delay*

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

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

9.05 *No intended Third-Party Beneficiaries*

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

9.06 *Public Record Compliance*

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

9.07 *Records*

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

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

9.08 *Force Majure*

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

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

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *E-Verify*

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

9.13 *Compliance with Other Federal Standards*

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

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

(c) Termination for Non-Appropriation of Funds.

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

(ii) The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Minimum wages.

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

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

(ii)

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

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

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

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

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

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

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

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

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

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

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

(2) Withholding.

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

(3) Payrolls and basic records.

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

(ii)

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

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

(ii) Trainees.

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Clean Air Act

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

Federal Water Pollution Control Act

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

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

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

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C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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

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

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

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

If applicable to the Federal awarding agency requirements:

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

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

(2) *Prohibitions.*

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

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

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

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

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

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

(3) Exceptions.

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

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

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

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

a. Covered telecommunications equipment or services that:

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

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

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

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(4) *Reporting requirement*.

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

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

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

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

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

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

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

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

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

(n) Access to Records and Reports:

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

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

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

(o) Changes. To be allowable under the Federal agency award or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

(p) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

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

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

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

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

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

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

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

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years pursuant to 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

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

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

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

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by Federal Awarding Agency.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be

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forwarded to the grant recipient who in turn will forward the disclosures to Federal Awarding Agency, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to Federal Awarding Agency.

Required Certification: If applicable to this Contract, for Federal financial assistance programs subject to BABAA Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

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

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

Contractor:

East Coast Marine Construction & Design, Inc.

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: John Zemball

(typed or printed)

Title: President

(typed or printed)

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

Attest: _____

(individual's signature)

Title: _____

(typed or printed)

Address for giving notices:

150 South Palmetto Avenue

Suite 201

Daytona Beach, Florida 32114

Phone: (3876) 777-7440

Email: john@eastcoastmarineconstruction.com

License No.: 82269

State: Florida

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Owner:

City of Port Orange

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Scott Stiltner

(typed or printed)

Title: Mayor

(typed or printed)

Attest: Robin L. Fenwick, MMC

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

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

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and **East Coast Marine Construction & Design, Inc.,** 150 South Palmetto Avenue, Suite 201, Daytona Beach, Florida 32114 ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

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

Project involves the complete removal of the existing concrete boat ramp, four timber access dock structures, four aluminum gangways, four floating dock systems, and the corresponding piles supporting the floating dock systems. The scope of work also includes the supply and installation of a new reinforced concrete boat ramp, three fixed reinforced concrete access docks, one timber access dock, four aluminum gangways, and four concrete floating dock systems, along with the necessary concrete piles for the floating dock systems. Additionally, the project includes milling and paving the existing asphalt road and parking area, as well as installing twenty-two bumper guards (wheel stops), four bollards, pavement markings, and an environmental informational kiosk with environmental signs and a monofilament bin, as specified in the construction plans and technical specifications provided in the bid package. This project is to be in compliance with state and federal regulation, and requires mandatory vibration monitoring, as outlined in construction plans and technical specifications.

_____.

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ARTICLE 2—THE PROJECT

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

_____.
ITB 25-12 Causeway Boat Ramp and Park Improvements.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, _____, **Curtis N. Todd, P.E.** ("Engineer") **of** _____, **Dredging & Marine Consultants,** and shall act as Owner's representative, assume all duties and

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responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within ~~_____~~ **375** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

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

1. *Substantial Completion:* Contractor shall pay Owner ~~$0.00~~ $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner ~~$0.00~~ $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

3. Deleted in its entirety.

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

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

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C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

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

A. Deleted in its entirety.

B. For all Unit Price Work in accordance with Paragraph 13.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

Unit Price Work					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Price**
See Exhibit No. 1 Contractor's Bid Schedule.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					$1,650,695.95

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

C. Deleted in its entirety.

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

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions

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(and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

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

        1) Deleted in its entirety.

    b. Deleted in its entirety.

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

6.03 *Final Payment*

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

6.04 *Consent of Surety*

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

6.05 *Interest* Deleted in its entirety.

A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Agreement (pages 1 to ~~__~~ 30, inclusive).
2. Bonds:
    a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Project Technical Specifications, on file with Project Engineer, Curtis Todd (pages ~~__~~ 1 ~~to __~~ , 35, inclusive).
6. Construction and Survey Drawings, on file with Project Engineer, Curtis Todd (pages 1 to 25, inclusive).
7. Addendum No. ~~__~~ 1 dated April 16, 2025 (pages ~~__~~ 1 to ~~__~~ 2, inclusive).
8. ~~Addendum No. __ (pages __ to __, inclusive).~~
9. Exhibits to this Agreement (enumerated as follows):
    a. Exhibit No. 1 Contractor's Schedule of Unit Pricing (page ~~__~~ 1, inclusive).

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b. Exhibit No. 2 Contractor's Submittal (pages 1 to 53, inclusive, not attached, on file with the office of the City Clerk).

c. Exhibit No. 3 Composite Exhibit No. 3 City's ITB 25-12 Causeway Boat Ramp and Park Improvements (pages 1 to 336, not attached, on file with office of the City Clerk).

d. Exhibit No. 4 General Decision Number FL20250232 dated 03/14/2025 Davis-Bacon Wage Determination (pages 1 to 6, inclusive).

e. Exhibit No. 5 Community Development Block Grant Program ("CDBG") Operating & Procedures Manual (pages 1 to 13, inclusive).

f. Exhibit No. 6 U.S. Department of Housing and Urban Development ("HUD") Supplementary Conditions to the Construction Contract (pages 1 to 10, inclusive).

g. Exhibit No. 7 Geotechnical Evaluation dated 12/6/23 (pages 1 to 17, inclusive).

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

a. Notice to Proceed.

b. Work Change Directives.

c. Change Orders.

d. Field Orders.

e. Warranty Bond, if any.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

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4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

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

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

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

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

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner,

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(b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

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

B. Any reference to Supplementary Conditions throughout this document, the C-520 Agreement between Owner and Contractor for Construction Contract (2018), and the EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), are hereby deleted in their entirety.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

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

9.02 *Successors and Assigns*

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

9.03 *Severability*

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

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

9.04 *No-Damage-for-Delay*

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

9.05 *No intended Third-Party Beneficiaries*

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

9.06 *Public Record Compliance*

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

9.07 *Records*

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

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

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9.08 *Force Majure*

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

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *E-Verify*

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

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the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

9.13 *Compliance with Other Federal Standards*

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

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

(c) Termination for Non-Appropriation of Funds.

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

(ii) The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

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

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

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

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

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a

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part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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

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

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

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

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

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

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administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

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

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

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

(1) Minimum wages.

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

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

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work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

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

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

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

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

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

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

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

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

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

(2) Withholding.

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

(3) Payrolls and basic records.

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

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written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

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

(ii) Trainees.

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

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on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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

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

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

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

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

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part

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401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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

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

Clean Air Act

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

Federal Water Pollution Control Act

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

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

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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(3) This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference, is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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

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

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

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

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

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

If applicable to the Federal awarding agency requirements:

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

(2) *Prohibitions.*

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

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

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

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

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

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

(3) Exceptions.

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

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

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

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

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a. Covered telecommunications equipment or services that:

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

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

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

(4) *Reporting requirement*.

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

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

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

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

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

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

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

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

(n) Access to Records and Reports:

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

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

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

(o) Changes. To be allowable under the Federal agency award or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

(p) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

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

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

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

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

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

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

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

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years pursuant to 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

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

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

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

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-

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federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by Federal Awarding Agency.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to Federal Awarding Agency, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to Federal Awarding Agency.

Required Certification: If applicable to this Contract, for Federal financial assistance programs subject to BABAA Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

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Formatted: Indent: Left: 0"

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

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

Contractor:

East Coast Marine Construction & Design, Inc.
(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: John Zemball
(typed or printed)

Title: President
(typed or printed)

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

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

150 South Palmetto Avenue

Suite 201

Daytona Beach, Florida 32114

Phone: (3876) 777-7440

Email: john@eastcoastmarineconstruction.coma

License 82269

State: Florida

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Owner:

City of Port Orange

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Scott Stiltner

(typed or printed)

Title: Mayor

(typed or printed)

Attest: Robin L. Fenwick, MMC

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

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Payment and Performance Bond

For Completion and Return to City for Recording

Consisting of 4 Pages

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor:	East Coast Marine Construction & Design, Inc.
Principal Business Address:	150 South Palmetto Avenue Suite 201 Daytona Beach, Florida 32114
Contact Person:	John Zemball, President
Phone Number:	(386) 777-7440

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

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

Amount: $1,650,695.95 **City Case/Project No. ITB 25-12 Causeway Boat Ramp and Park Improvements**

Description of Work: ITB 25-12 Causeway Boat Ramp and Park Improvements

Project Location: City of Port Orange Causeway Park, 93 Dunlawton Avenue, Port Orange, Volusia County, Florida

Legal Description: Portions of Parcel ID#: 6303-00-00-0020
See Attached **Exhibit "A"**

Front Page

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

EXHIBIT "A"

LEGAL DESCRIPTION:

PID#: 6303-00

Commence at the Southwest corner of U.S. Lot 1, Section 3, Township 16 South, Range 33 East; thence East along the South line of said Lot 1 and the said South line produced a distance of 4804.7 feet; thence south 62°30' West a distance of 374.5 feet, thence North 36°39' West a distance of 141 feet to the Point of Beginning, said point being in the North right of way line of the present County Causeway; thence North 35°39' West a distance of 350 feet; thence North 25°56'40" East, a distance of 338.34 feet, to the South line of a side channel; thence South 87°57'31" East along said South line a distance of 1050 feet; thence South 27°57'31" East a distance of 34.53 feet to the North right of way line of the present county causeway; thence South 62°02'29" West along said North right of way line a distance of 1120 feet to the Point of Beginning, all being in the unsurveyed part of Township 16 South Range 33 East, Volusia County, Florida.

And Florida Department of Transportation SR A1A (Dunlawton Avenue), also described as Port Orange Bridge Causeway.

East Coast Marine Construction & Design, Inc.

ITB 25-12 Causeway Boat Ramp and Park Improvements

Bond No._____

COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION

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

BY THIS BOND, We, **EAST COAST MARINE CONSTRUCTION & DESIGN, INC.** as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of **ONE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED NINETY-FIVE AND 95/100 DOLLARS** (**$1,650,695.95**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

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

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

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

Notice of Nonpayment and Time Limitations

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

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

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

Attest:

EAST COAST MARINE CONSTRUCTION & DESIGN, INC.

_____
(As to Corporate Principal) Secretary

By:_____
John Zemball, President

_____
(Witness to Principal)

(Corporate Seal)

_____
(Surety)

_____
(Witness to Surety)

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

(Corporate Seal)

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

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

EJCDC General Conditions (Clean Copy)

Consisting of 75 Pages

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

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

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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10. *Claim*

    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

    b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

    c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

    d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

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20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

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

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

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

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

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

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

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30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

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

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions."

34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

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

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

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

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. Emergency *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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

1. does not conform to the Contract Documents;

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

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

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

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

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

C. Deleted in its entirety.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

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

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

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

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

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

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

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

3.02 *Reference Standards*

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

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by careful review of the Contract Documents including pertinent figures and applicable field measurements and dimensions therein..

B. *ResolvingDiscrepancies*

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

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

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

   c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

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

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

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

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

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

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B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;

2. Abnormal weather conditions not anticipated or customary in Volusia County;

3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and

4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.

2. Deleted in its entirety.

3. Adjustments of Contract Times are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;

2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;

3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;

4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. Deleted in its entirety.

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

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

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Deleted in its entirety.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and

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

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

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

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

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

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

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract

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

c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

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

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

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

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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

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

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

   b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. Contractor gave the notice required in Paragraph 5.05.B.

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2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

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

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

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

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

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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

I. Deleted in its entirety.

J. Deleted in its entirety..

K. Deleted in its entirety.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract~~,~~. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in Florida, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. Prior to the date of commencement as set forth in the Notice to Proceed, if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

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

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

6.02 *Insurance—General Provisions*

A. Contractor shall obtain and maintain insurance as required in this article.

B. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized in the State of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Deleted in its entirety.

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

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

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H. Contractor shall require:

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

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

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

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

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

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

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

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

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Solicitation / ITB document referenced in Article 7 of the Agreement.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

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2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;

5. include completed operations coverage:

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

   b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.

6. make the Contractor solely responsible for any insurance deductible or self-insured retention.

7. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

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

6.04 *Builder's Risk and Other Property Insurance*

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

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

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Contractor's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner through Contractor will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors,

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

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Deleted in its entirety.

1. Deleted in its entirety.

C. Deleted in its entirety.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

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

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

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

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

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

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding jobsite conduct.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

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

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

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For

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

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

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

2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

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

4) is not objectionable to Owner.

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

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

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

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

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

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

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that

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

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

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

    a. will certify that the proposed substitute item will:

        1) perform adequately the functions and achieve the results called for by the general design;

        2) be similar in substance to the item specified; and

        3) be suited to the same use as the item specified.

    b. will state:

        1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

        2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

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

    c. will identify:

        1) all variations of the proposed substitute item from the item specified; and

        2) available engineering, sales, maintenance, repair, and replacement services.

    d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

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

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

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F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

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

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

B. Deleted in its entirety.

C. Deleted in its entirety.

7.09 *Permits*

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

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

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

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

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

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

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

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3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

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

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

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c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

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

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

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5. Any review and approval of a Shop Drawing or Sample submittal;
6. The issuance of a notice of acceptability by Engineer;
7. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .

B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

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

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

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

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

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

8.03 *Legal Relationships*

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

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

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

9.06 *Insurance*

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

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9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Deleted in its entirety.*

A. Deleted in its entirety.N/A

9.12 *Safety Programs*

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

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

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

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

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

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10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

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11.02 *Change Orders*

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

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Emergency *Work Change Directives*

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

B. If Owner has issued a written Emergency Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

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

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

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

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

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the

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

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

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

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

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

11.09 *Change Proposals*

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

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

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

4. *Engineer's Full Review and Recommendation on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of

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

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

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ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety.

A. Deleted in its entirety.

1. Deleted in its entirety.

2. Deleted in its entirety.

3. Deleted in its entirety.

4. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

D. Deleted in its entirety.

1. Deleted in its entirety.

2. Deleted in its entirety.

3. Deleted in its entirety.

E. Deleted in its entirety.

F. Deleted in its entirety.

G. Deleted in its entirety.

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

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

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

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

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

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

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

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

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

5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

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

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

13.02 *Allowances*

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

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

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

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

13.03 *Unit Price Work*

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

B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

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

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

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E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

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

    b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

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

3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

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2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

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14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

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

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

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

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

B. *Applications for Payments*

1. Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work

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under Paragraph 13.03, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

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

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

   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.

6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, requiring correction or replacement;

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

   c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

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d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

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l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Punch List items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a Punch List of items to be completed or corrected before final payment Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised Punch List of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

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D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

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15.05 *Final Inspection – Punch List*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

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

3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) all payrolls, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its

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

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

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25) days of the final Application for Payment being stamped as received by Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

   1. correct the defective repairs to the Site or such adjacent areas;

   2. correct such defective Work;

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

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

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

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

4. Contractor's repeated disregard of the authority of Owner or Engineer:

5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

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

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

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

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

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

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

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

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

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

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EJCDC General Conditions
(Additions and Deletions Version)

Consisting of 78 pages

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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

1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

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

2.0 OTHER DOCUMENTS

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

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

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

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

3.0 ORGANIZATION OF INFORMATION

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

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

4.0 EDITING THIS DOCUMENT

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

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

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

1. The term "Standard EJCDC Text" for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.

2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using "Track Changes" (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.

3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.

4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any "Track Changes," redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

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

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

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

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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10. *Claim*

    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

    b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

    c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

    d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

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20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

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

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

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

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

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

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

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30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

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

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions."

343. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

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

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be ~~occupied and/or~~ utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work. ~~Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner to begin to utilize the entire Project for the purposes for which it was intended.~~

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

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

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. Emergency *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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

1. does not conform to the Contract Documents;

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

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

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

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

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

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

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion ~~and Final Completion~~ date~~s~~;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

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2.05 *Acceptance of Schedules*

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

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a ~~dlay~~delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

5. If Contractor submits a schedule indicating an intention to achieve completion of the Wok prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.

6. The Contractor acknowledges ~~tht~~that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

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

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

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

3.02 *Reference Standards*

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

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by ~~carefully studying and comparing~~careful review of the Contract Documents ~~and checking and verifying~~including pertinent figures ~~therein~~ and ~~all~~ applicable field measurements and dimensions therein..

B. *Resolving Discrepancies*

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

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

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

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

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

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

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

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption,

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

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated ~~C~~causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions not anticipated or customary in Volusia County;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times ~~or Contract Price~~ is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Deleted in its entirety.~~Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.~~
3. Adjustments of Contract Times ~~or Contract Price~~ are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times ~~or Contract Price~~ must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

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

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

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

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

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

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Deleted in its entirety.~~Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

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

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

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

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

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell ~~tower~~ ~~floors~~pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects~~.~~; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

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5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

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

3. Technical Data contained in such reports and drawings.

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

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

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

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2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

   b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

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c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

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

c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

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

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5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

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

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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

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

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in

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

a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

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

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

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of construction to be employed by Contractor, and safety precautions and programs incident thereto;

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

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

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv)

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

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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

I. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

J. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence~~.

K. Deleted in its entirety.~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~

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ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a payment and performance bond ~~and a payment bond~~ in accordance with Sec.~~,~~ 255.05, Florida Statutes, ~~each~~ in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract~~, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury~~. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in ~~the state or jurisdiction in which the Project is located~~Florida, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. Prior to the date of commencement as set forth in the Notice to Proceed, ~~I~~if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

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

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

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6.02 *Insurance—General Provisions*

A. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this article.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the sState or jurisdiction in which the Project is locatedof Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated ~~in the~~ Supplementary Conditions, all companies that provide insurance policies required under this Contract shall ~~have an A.M. Best rating of A-VII or better.~~

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Deleted in its entirety.Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). ~~Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~

F. Failure of Owner or Contractor to demand such certificates or other evidence of the Contractorother party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as ~~a waiver of the~~ other partyContractor's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain ~~Owner's own~~ liability insurance. Owner's liability

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

H. Contractor shall require:

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

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

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

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

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

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

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

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

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6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the ~~Supplementary Conditions~~ Solicitation / ITB document referenced in Article 7 of the Agreement.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of ~~them~~ to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include completed operations coverage:

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

b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions evidence satisfactory to Owner of continuation of such insurance at final payment.

6. make the Contractor solely responsible for any insurance deductible or self-insured retention.

7. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

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

6.04 *Builder's Risk and Other Property Insurance*

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

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: ~~Owner~~ Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor~~Owner~~ will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of ~~Owner's~~ Contractor's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner ~~(directly, if it is the purchaser of the builder's risk policy, or~~ through Contractor~~)~~ will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

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

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

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or~~ Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Deleted in its entirety.~~Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~

1. Deleted in its entirety.~~Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~

C. Deleted in its entirety.~~The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

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6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, ~~exclsuing~~excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to ~~o~~Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall ~~constitue~~constitute a material breach of the Contract. If O~~o~~wner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

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

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

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

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

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

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

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding ~~the~~ jobsite conduct.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons ~~canying~~carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other ~~sanitaiy~~sanitary facilities within the Owner's existing buildings or on-site facilities.

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

7.04 *Services, Materials, and Equipment*

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

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

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

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

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

        2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

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

        4) is not objectionable to Owner.

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

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

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

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

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C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

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

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

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

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

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2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

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

c. will identify:

1) all variations of the proposed substitute item from the item specified; and

2) available engineering, sales, maintenance, repair, and replacement services.

d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

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

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

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7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

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

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K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

B. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~

C. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~

7.09 *Permits*

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

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

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

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

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

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

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

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3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

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

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

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c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

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

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

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5. Any review and approval of a Shop Drawing or Sample submittal;
6. The issuance of a notice of acceptability by Engineer;
7. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner ~~and Engineer~~, and the Owner's officers, ~~directors, members, partners,~~ and employees, ~~agents, consultants and subcontractors of each and any of them,~~ from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection ~~but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable~~.

B. ~~In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~ The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity

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

C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

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2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed

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

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

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

8.03 *Legal Relationships*

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

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or

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

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Deleted in its entirety.~~Evidence of Financial Arrangements~~*

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

9.12 *Safety Programs*

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

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

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10.02 *Visits to Site*

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

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

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.

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B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

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

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Emergency *Work Change Directives*

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

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B. If Owner has issued a written Emergency Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit ~~any Claim seeking such~~ a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

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

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

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

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B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

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

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs,

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

11.08 *Change of Contract Times*

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

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

11.09 *Change Proposals*

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

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

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

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

4. *Engineer's Full Review and ~~Action~~ Recommendation on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend ~~approve~~approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon ~~Owner and~~ Contractor, unless ~~Owner or~~ Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety

A. Deleted in its entirety.~~*Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:~~

1. Deleted in its entirety.~~Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~

2. Deleted in its entirety.~~Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

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3. Deleted in its entirety.~~Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and~~

4. Deleted in its entirety.~~Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.~~

B. Deleted in its entirety.~~*Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.~~

C. Deleted in its entirety.~~*Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.~~

D. Deleted in its entirety.~~*Mediation*~~

1. ~~At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.~~

2. Deleted in its entirety.~~If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.~~

3. Deleted in its entirety.~~Owner and Contractor shall each pay one-half of the mediator's fees and costs.~~

E. Deleted in its entirety.~~*Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.~~

F. Deleted in its entirety.~~*Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal~~

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

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

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

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors~~, attorneys, and accountants~~) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

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

        2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

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3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

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

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

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

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

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5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

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

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B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

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

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

13.03 *Unit Price Work*

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

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

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

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

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

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

b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

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

3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

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

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

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

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

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. ~~At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month),~~ Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

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2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor ~~within 10 days after the date on the Application for Payment is stamped as received by Engineer~~ indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall~~may~~ make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

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3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

    a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

    b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

    a. to supervise, direct, or control the Work;

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

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

    d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

    e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.

6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

    a. the Work is defective, requiring correction or replacement;

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

    c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

    d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

    e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

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D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

   a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

   b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

   c. Contractor has failed to provide and maintain required bonds or insurance;

   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

   e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

   f. The Work is defective, requiring correction or replacement;

   g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

   h. The Contract Price has been reduced by Change Orders;

   i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

   j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

   k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

   l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the

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

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Ppunch lList items to be completed or corrected before final payment. Substantial Completion cannot occur before the ~~Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows~~ Owner is able to begin to utilize the entire ~~Project~~Work for the purposes for which it was intended.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion ~~subject to Certificate of Occupancy (or Completion)~~. Engineer shall attach to the certificate a ppunch lList of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Ppunch lList. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised ppunch lList of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

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D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the Ppunch Llist of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ppPunch llList items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Ppunch llist.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

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15.05 *Final Inspection – Punch List*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) ~~insruance~~insurance;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

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

3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) ~~the releases and receipts include~~ all payrolls~~labor~~, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor ~~a Lien could be filed~~; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. ~~might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied.~~ If any

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

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

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25)~~30~~ days of the final Application for Payment being stamped as received by ~~Owner's receipt of the final Application for Payment from~~ Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

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

4. Contractor's repeated disregard of the authority of Owner or Engineer~~.~~:

5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ~~10~~ 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within ~~7~~ 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

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

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon ~~7~~ 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

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

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

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

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

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

1. Deleted in its entirety.~~A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~

2. Deleted in its entirety.~~Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

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

1. Deleted in its entirety.~~elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~

2. Deleted in its entirety.~~agree with the other party to submit the dispute to another dispute resolution process; or~~

3. Deleted in its entirety.~~if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

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

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

2. *Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.*

3. *Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event after the expiration of the applicable statute of limitations.*

4. *The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.*

5. *Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.*

6. *In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.*

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the S~~s~~tate of Florida~~in which the Project is located~~.

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

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EJCDC Project Technical Specifications
on file with Project Engineer, Curtis Todd

consisting of 35 pages

The City of Port Orange

Causeway Park Boat Ramp
& Parking Lot Improvements

Project Technical Specifications

March 27, 2025

Item 1 **Mobilization and Demobilization (Including Dewatering):**

The work specified in this section consists of the preparatory work and operations necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, sanitary and other facilities, as required by these Technical Specifications, the construction plans, and State and local laws and regulations. All costs for the necessary bonds as indicated in the bid document shall be included in this item.

All costs for permits and any required insurance, and any other pre-construction expense necessary for the start of the work, as well as the cost of the removal of the above items, shall also be included in this item. All costs associated with trimming/clearing of trees, other vegetation, turf removal, any other materials, and any other site preparation tasks necessary to allow construction of the project, shall also be included in this item. **The contractor is responsible for all work and costs associated with acquiring all necessary documents including but not limited to permits required for dewatering, mangrove trimming, mangrove removal, etc. as necessary for the construction of the proposed structures.** All costs associated with collecting complete photographic and video documentation of the site prior to construction shall also be included in this item. All costs associated with grading and grassing the project site once work is complete to restore the site to pre-work conditions shall also be included in the cost of this bid item. The CONTRACTOR shall be responsible for irrigating newly placed grass to ensure establishment and long-term viability of grass cover.

At the pre-construction meeting, the CONTRACTOR shall submit a tentative work schedule, safety plan, a shipping, stockpile and site administration plan (SSSAP), a complete list of all SUBCONTRACTORs that will be employed by the PRIME CONTRACTOR, and complete contact information for PRIME CONTRACTOR staff and all SUBCONTRACTOR staff. Personnel to be included in the contact lists shall include, but not necessarily be limited to: CONTRACTOR and SUBCONTRACTOR Principals, CONTRACTOR and SUBCONTRACTOR Project Managers, CONTRACTOR and SUBCONTRACTOR Site Superintendents and/or Foremen. In addition, emergency contact information shall be included for the PRIME CONTRACTOR and all SUBCONTRACTORs.

The basis of payment for **Mobilization and Demobilization (Including Dewatering)** shall be LUMP SUM. Fifty (50) percent of this lump sum cost shall be paid upon mobilization of equipment to the project site. An additional 30% of this cost shall be paid as the project progresses. The final 20% of this cost, less retainage, shall be paid upon removal of all equipment from the project site.

Item 2 **Construction and As-Built Survey:**

The bid price for this item shall include all necessary survey work for the CONTRACTOR to complete all construction activities. Elevations for the plans are based on the North American Vertical Datum 1988 (NAVD 88).

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for the field layout of all work. The CONTRACTOR's licensed land surveyor shall perform all initial site layout and shall provide follow-up verification of all work underway at a frequency of no less than once a week. All deviations from the construction plans, no matter how minor, that are noted during the follow-up verifications shall be recorded on the project redline plan set which shall always be maintained on the site and submitted to the ENGINEER prior to project close-out. The ENGINEER must approve the initial site stakeout before any work begins; the CONTRACTOR shall provide a minimum of 72 hours' notice to the ENGINEER of the anticipated completion of the initial stake-out so the inspection and field verification can be scheduled. **Prior to start of construction, the surveyor shall also locate any mangroves and other protected/threatened vegetative species located within or adjacent to (within 25 feet) the project area so these may be flagged, and appropriate protective measures set up prior to starting work.** All intermediate construction surveys shall be included in this item. The CONTRACTOR is cautioned that the survey must be conducted with respect to adjacent site aspects and must contact the ENGINEER for any clarification prior to any construction.

The bid price for this item shall include all necessary survey work for the CONTRACTOR to furnish an as-built survey of the completed project. The as-built survey shall be referenced to the NAVD 88 vertical datum. The CONTRACTOR shall submit two (2) hard copies and two (2) electronic copies of the as-built survey for the completed project. These documents shall be signed and sealed by a professional surveyor registered in the State of Florida and then submitted to the ENGINEER for approval. The CONTRACTOR shall accurately record the location and elevations of all constructed grades and structures including but not limited to: concrete boat ramp (elevations at minimum 10-foot intervals, all four corners, and vertical inflection points), fixed concrete access docks (elevations at minimum 10-foot intervals and at all corners), fixed timber access docks and timber pile locations and finished top elevations (elevations at minimum 10-foot intervals and at all corners), concrete floating dock (elevations at all corners of section), all pre-stressed concrete pile locations and finished top elevations, location all bollards, limits of asphalt pavement and locations of slope changes and crown elevations, and the locations of pavement marking and all signs.

The basis of payment for **Construction and As-Built Survey** shall be LUMP SUM. Thirty (30) percent of the lump sum cost shall be paid upon acceptance of the initial site stakeout by the ENGINEER. The remainder of the cost, less retainage, shall be paid as the project progresses.

Item 3 **<u>Vibration Monitoring:</u>**

The bid price for this item shall include the required manpower, equipment, materials and other costs involved in vibration monitoring throughout construction duration.

CONTRACTOR shall provide a third party monitoring service with a calibrated seismograph; costs of seismograph/vibration monitoring shall be included in the bid price for this item. Vibration monitoring reports shall be submitted to the ENGINEER weekly for approval, and copies of the reports shall be made available to the CITY OF PORT ORANGE and the ENGINEER at any time upon request. CONTRACTOR is responsible for ensuring vibration monitoring measures and means/methods

utilized during construction are non-destructive and will not compromise or create any adverse impacts to all existing structures.

The basis of payment for **Vibration Monitoring** shall be LUMP SUM. Fifty (50) percent of the lump sum cost shall be paid upon mobilizing and properly installing all vibration monitoring control measures. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of all vibration monitoring control measures from the project site once the work has been completed is required before final acceptance of the project by the CITY OF PORT ORANGE.

Item 4 **Environmental Compliance (Including Turbidity Control):**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to maintain regulatory compliance and environmental protection during all phases of construction. This item includes all costs related to obtaining a NPDES permit and complying with all NPDES permit requirements. Turbidity curtains and silt fencing shall always be installed around construction areas and the CONTRACTOR shall take all proactive measures to reduce loss of sediment and turbidity generation in receiving waters during all construction activities. The bid price for this item shall include all costs for monitoring and reporting turbidity of water discharged from the site as required by the NPDES or other permits, as well as all costs for corrective measures taken to correct measured turbidity levels in excess of permitted conditions. **The maximum allowable turbidity above background level shall be 29 NTU per the Florida Administrative Code (F.A.C.) 62-302.531 Numeric Interpretations of Narrative Nutrient Criteria.** These monitoring and testing requirements also apply to discharges from the site from any required dewatering measures. Turbidity monitoring reports shall be submitted to the ENGINEER weekly for approval, and copies of the reports shall be made available to the CITY OF PORT ORANGE and the ENGINEER at any time upon request.

The bid price for this item shall also include all costs associated with regularly inspecting and maintaining all other erosion, sediment, and turbidity control measures employed during construction of this project, as well as any necessary repairs and/or replacement of these measures, with the need determined through regular inspections conducted at minimum intervals as specified in the NPDES and other project permits, and/or at the direction of the ENGINEER and/or CITY OF PORT ORANGE. Copies of the control measure inspection reports shall be submitted to the ENGINEER within one week of the inspection, and a summary of corrective measures taken to address noted deficiencies shall be included. A weekly log of these inspections shall be provided to the ENGINEER.

In addition, the CONTRACTOR shall comply with all permits for this project and all federal, state, and local water quality standards throughout the duration of the project. This project has been permitted through the US Army Corps of Engineers (USACE), and the Florida Department of Environmental Protection (FDEP). Copies of the USACE and FDEP permits have been included with the CONTRACT documents, and the CONTRACTOR shall keep copies of these documents on site at all times while the project is under construction.

The CONTRACTOR shall take all necessary precautions to avoid damage to wetland vegetation and trees to be preserved. This item includes costs related to flagging and marking protected vegetation, as well as protective measures for these.

The basis of payment for **Environmental Compliance (Including Turbidity Control)** shall be LUMP SUM. Fifty (50) percent of the lump sum cost shall be paid upon obtaining an NPDES permit and properly installing all erosion and turbidity control measures. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of all control measures from the project site once the work has been completed is required before final acceptance of the project by the CITY OF PORT ORANGE.

Item 5 **Demolition, Hauling and Disposal:**

The bid price for this item shall include the required manpower, equipment, materials and other costs involved in the removal and disposal of all items indicated for demolition in the construction plans, including but not limited to; existing piles within the boat ramp area, existing concrete boat ramp and any base or subbase material, and all other demolition, hauling, and disposal required to construct the project as indicated in the construction plans. Existing pile cut off will not be accepted. The CONTRACTOR must make an honest attempt to remove all existing piles using CONTRACTOR means and methods. If the existing piles cannot be extracted, the CONTRACTOR must submit a request in writing, to cut the existing piles. The ENGINEER or record must observe in field that the piles cannot be extracted. Any pile cut off without written approval from the ENGINEER of record will be at the CONTRACTOR's expense and the CONTRACTOR must extract the remaining pile.

The CONTRACTOR shall take all necessary precautions to avoid damage to upland and wetland vegetation and trees to be preserved during removal, demolition and hauling of debris. In addition, the CONTRACTOR shall take all necessary precautions to avoid impacts to in-water resources during demolition and removal of the existing structures. All environmental protection measures shall be in place before any demolition or other construction activity commences. The CONTRACTOR shall be responsible for requesting utility locates from Sunshine 811 prior to commencing any demolition or other earthwork activities. All silt fence, turbidity curtains and other erosion and sediment control measures must be in place prior to commencing and demolition activities.

The basis of payment for **Demolition, Hauling and Disposal** shall be LUMP SUM.

Item 6 **Aluminum Gangway (30' x 5'):**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware needed to properly furnish and install the aluminum gangway as indicated in the plans. The gangway kick plates must provide smooth transitions to the floating dock system for all water elevation conditions. The gangway shall have fixed railings with ADA-compliant grab rails on both sides.

The CONTRACTOR shall submit a shop drawing of the gangway, connection detail to the timber dock and roller detail at the termination of the gangway to the ENGINEER for approval prior to manufacturing, purchase or installation. Any

products or materials manufactured, purchased, or installed prior to shop drawing approval will need to be replaced at the CONTRACTOR'S expense if corresponding shop drawings are not approved by the ENGINEER.

The CONTRACTOR is responsible for rejecting any gangway sections that are delivered to the project site damaged to an extent where they are unusable. Any repairs to damaged gangways shall be made by or under the supervision of the manufacturer, using methods and materials approved by the manufacturer, and a letter from the manufacturer stating that the repaired items will meet the structural requirements of the project shall be submitted to the ENGINEER before they will be accepted. Any damaged gangway sections that have been installed without this acceptance by the ENGINEER will be removed and replaced at the CONTRACTOR's expense.

The basis of payment for **Aluminum Gangways (30' X 5')** is per EACH.

Item 7 **Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles):**

The bid price for this item shall include, but not be limited to, third-party geotechnical firm for pile installation observation, the required manpower, equipment and material involved in purchasing and properly installing the floating concrete dock system as indicated in the construction plans. Proper installation of the floating system is the responsibility of the CONTRACTOR and such installation methodology must be submitted to the ENGINEER for verification before proceeding. Dock segments should be properly supported during transportation and installation, and the CONTRACTOR is responsible for replacing any damaged segments at their own expense.

All shop drawings must be submitted to the ENGINEER for approval prior to manufacturing, purchase or installation. Any products or materials manufactured, purchased or installed prior to shop drawing approval will need to be replaced at the CONTRACTOR's expense if corresponding shop drawings are not approved by the ENGINEER. Any alternate floating dock that does not qualify as an approved equivalent product, such as an aluminum floating dock, etc. will not be accepted or approved. Any product purchased that does not qualify as an approved equivalent product and was not approved by the engineer of record will not be reimbursed and will be at the CONTRACTOR's expense.

In addition, this item shall include the required manpower, equipment and materials needed to purchase and properly install the 14" Square FDOT Marine Grade Pre-Stressed Concrete Piles with White Composite Pile Caps for the floating concrete dock system, in the locations identified in the plans. The CONTRACTOR is responsible for providing pile installation equipment and methods that will deliver sufficient energy to drive the piles to the indicated embedment depth without causing excessive damage to the piles. Piles should be properly supported during transportation and installation, and the CONTRACTOR will be responsible for replacing any damaged piles at their own expense.

If solid rock, debris or refusal is encountered prior to achieving design tip elevation, the pile must be tool punched through the strata. The ENGINEER will make the final determination on if refusal is encountered.

Absolutely no piles shall be cut to design top elevation, beyond the top six (6) inches of the pile, which is damaged by installation, without prior written approval of the ENGINEER. If the CONTRACTOR requests to cut off piles, the piles must remain "in-place, as-is", and the ENGINEER notified a minimum of 72 hours in advance so a site visit and recommendations based on observed field conditions can be made. Any pile cut off without prior written approval from the ENGINEER shall be removed and replaced at the CONTRACTOR's expense.

The CONTRACTOR shall have a third-party geotechnical firm observe all pile installation activity and to maintain a pile installation log on the site at all times, and this log shall be available for inspection by the CITY OF PORT ORANGE or the ENGINEER on request. The information to be recorded in the log shall be per "Sheet-Pile and Concrete Pile Installation" Note 11 of the General Notes, Sheet C-12 of the construction plans. The CONTRACTOR shall submit the final pile installation logs prior to project closeout so the ENGINEER may review them prior to final project acceptance. The ENGINEER shall not make a structural certification without this submittal.

Shop drawings and technical data sheets for the floating dock sections and the piles, and the FDOT certification for the pre-cast plant supplying the prestressed concrete piles, must be submitted to the ENGINEER for approval prior to manufacturing, purchase or installation.

The CONTRACTOR is responsible for rejecting any piles or floating dock sections that are delivered to the project site damaged to an extent where they are unusable. Any repairs to damaged piles or floating dock sections shall be made by or under the supervision of the manufacturer, using methods and materials approved by the manufacturer, and a letter from the manufacturer stating that the repaired items will meet the structural requirements of the project shall be submitted to the ENGINEER before they will be accepted. Any damaged piles or floating dock sections that have been installed without this acceptance by the ENGINEER will be removed and replaced at the CONTRACTOR's expense.

The CONTRACTOR is responsible for ensuring required submittals are made promptly so that fabrication time for the piles does not adversely impact the project schedule. Any products or materials manufactured, purchased, or installed prior to shop drawing approval will need to be replaced at the CONTRACTOR's expense if corresponding shop drawings are not approved by the ENGINEER.

CONCRETE FLOATING DOCK SYSTEM
TECHNICAL SPECIFICATIONS

1. GENERAL

1.1 THE SCOPE

The Contractor shall furnish all tools, equipment, materials, and supplies and shall perform all labor, supervision, fabrication, assembly, and installation of a complete concrete float system.

1.2 CONTRACTOR SITE INSPECTION

The Contractor shall examine the jobsite before preparing his shop drawings to verify all physical conditions and surroundings.

1.3 TECHNICAL

The flotation system shall consist of modular sections designed in such a manner that modules may be replaced with standard modules in case of repairs.

Float modules shall be structurally connected by a treated timber or other approved type of waler system that will allow replacement without affecting the float modules. Connection methods that create structural failure of the float module when over stressed will not be allowed. Concrete float modules must have concrete cover for protection on all six sides. Floats without concrete bottoms will not be allowed. Minimum concrete deck, bottom and wall sections shall be as follows:

Deck	2.00 inches
Walls	1.50 inches
Bottoms	1.25 inches

Sufficient flotation shall be provided to support a live load of fifty (50) pounds per square foot of deck area with a minimum freeboard of nine (9) inches.

Freeboard under dead load only shall not be less than seventeen (17) inches or exceed twenty (20) inches.

The Contractor should exercise caution to insure that all deadloads are accurately determined and included in buoyancy calculations. These loads should include appropriate safety factors if used and any specific manufacturing considerations that will affect the final freeboard.

Dead loads shall consist of the floats, framing, waler system, attachment steel, miscellaneous connection devices, and all other permanently attached equipment such as utilities, boxes, fire protection equipment, etc.

Special floats must be designed to support the additional concentrated loads as imposed by gangways, transformers, or other equipment. Floats with special loadings shall have the same

freeboard as floats with no such loading, so that there will be residual stresses or tilting when such floats are interconnected unless specifically approved by the float system engineer.

The weight of lumber for these calculations shall be assumed at no less than forty (40) pounds per cubic foot.

Walking surface of concrete floats shall be level and flush with respect to the adjacent floats.

Floats shall be designed to float level under dead load only. The decks of the floats shall be within the followings tolerances of being level:

- Maximum transverse slope for main floats: two (2) inches per ten (10) feet of width
- Maximum longitudinal slope: two (2) inches per ten (10) feet

Flotation units shall be located within the structure so as to be capable of supporting a 300-pound point load moving in any area on a float without excessive rolling or tilting on the dock. When a 400-pound load is applied one foot from the end of the finger, that finger will lose no more than four inches of freeboard. When a 300-pound load is applied to one outer corner of the finger there should be no more than 2 inches in freeboard differential per three feet of width between the outer corners of the finger. This should be done once the system is totally connected and in its final intended condition.

Float and anchorage systems shall be designed for the following load cases as a minimum:

- Wind pressure of 15 PSF (77 MPH fastest mile wind at 33 feet standard elevation, Exposure C, per ASCE 7-16) acting on the projected area of all docks and moored vessels assuming full occupancy of the marina.
- Minimum current pressure of 0 PSF (0 feet per second current velocity) acting on the projected area of all docks and moored vessels assuming occupancy levels will reflect those expected during the flood season.
- Vertical wave loads, as they exist at the specific site.
- Lateral wave loads for waves having a significant wave heights exceeding one foot if they are expected to occur at the specific site.
- Load cases should be combined based upon the probability of simultaneous occurrence of the events.
- Lateral pile loads at the maximum surge level.

1.4 STANDARDS

All docks, structures and components must be designed per one of the following codes or authorities, depending upon the application:

UBC (Uniform Building Code)
SBC (Standard Building Code)
MBMA (Metal Building Mfg. Assoc.)
BOCA (Building Official Congress of America)
City/State/City Building Code
Army Corps Manual SR-2
ASTM Standards
AISI (American Iron and Steel Institute)
AISC (American Institute of Steel Construction)
AWPA (American Wood Preservers Assoc.)
PCI (Prestressed Concrete Institute)
CRSI (Concrete Reinforcing Steel Institute)

Parameters

- Wind load calculations shall be based on an average vessel profile height equal to 15% of the slip length.
- Current load calculations shall be based on the average vessel draft determined by the intended vessel types.
- Calculations are to be performed for wind and current loads both parallel to and perpendicular to the slips.
- Full wind and current loads shall be applied to all exposed vessels. To account for sheltering effects, 15% of the full load shall be applied to all vessels sheltered by the exposed vessel.
- Calculations shall assume that any given boat/slip may be exposed during a design event.
- Allowable material stresses shall be based on the latest edition of the Uniform Building Code.
- Minimum evaluation of the design wave environment shall include identifying the Significant Wave Height, Peak Spectral Wave Length, Wave Period and Wave Approach Angle.

1.5 DRAWINGS

Prior to fabrication or construction, the Contractor shall furnish sufficient information to describe the floating dock system and shall submit complete shop drawings and calculations for approval by the CITY OF PORT ORANGE. Dock and anchorage drawings and calculations shall be affixed with the appropriate stamps and signatures of a registered professional coastal engineer, maintaining professional liability insurance with a minimum policy limit of $2,000,000. The Engineer of Record shall seal all drawings with a stamp identifying him/her as a registered Professional

Engineer licensed in the state in which the project is located. The Engineer shall have designed at least ten previous marina projects of a size and function similar to this project that has been in use for a minimum of five years.

Shop drawings shall show the layout of the dock system, layout of complete mooring/anchoring system, details of all connections, waler sizing and splice pattern, anchorage connections, utility routings and all other details necessary and pertinent to the construction of the floating dock system.

1.6 CALCULATIONS

All design calculations shall assume that all slips are occupied, that any individual slip may be exposed during a design event and that all reasonable deadloads have been incorporated into the system.

Once the loads are determined by the applicable codes listed above, the design and calculations shall be prepared in accordance with AISI and AISC specifications and guidelines.

All engineering and calculations shall be done in accordance with these guidelines using the appropriate allowable capacities and safety factors. Calculations are to be stamped by a registered professional coastal engineer, maintaining professional liability insurance with a minimum policy limit of $2,000,000. The engineer of record shall seal all calculations with a stamp identifying him/her as a registered Professional Engineer licensed in the state in which the project is located. The Engineer shall have designed at least ten previous marina projects of a size and function similar to this project that has been in use for a minimum of five years.

In addition to sizing all members for these codes and specifications, the following calculations shall be submitted as a minimum for the dock system:

- Anchorage attachment points to insure reactions shall be appropriately and rationally distributed throughout the system.
- Finger lateral loads from current and wind in the shielded and unshielded condition for each finger length. Calculations will provide transfer assumptions for both cantilever and non-cantilever type fingers, including finger-to-walk connections.
- Overall system loads under full occupancy with consideration for shielding factors and deflections of the system and its effects on anchor loading.
- Anchorage system capacity for individual and overall load considerations.
- If anchor piles are utilized for mooring, the special design information should include:

Pile size and cross section
Overall pile length
Minimum embedment

- Vertical loading due to wave action and live load requirements including both walkways and fingers.

1.7 QUALITY ASSURANCE

The manufacturer must have an ongoing quality management system. This quality system must be regularly assessed and currently certified as meeting the ISO 9001 Standard. The scope of this certification must be for the design and manufacture of floating docks and pertain to the company or portion of the company providing the products and services for the project. The registrar providing this certification must be accredited according to EN 45012.

All steel fabrication and welding will be performed in a facility currently certified as meeting the ISO 9001 Standard. All structural steel welders shall be qualified in accordance with requirements of ANSI/AWS D1.1, 2010 Structural Welding Code.

All structural steel welding shall be completed in accordance with requirements of ANSI/AWS D1.1, 2010 Structural Welding Code-Steel, and utilizing 0.035 welding wire AWS A5.18, ABS ER70S-6.

All aluminum welding shall be completed in accordance with requirements of ANSI/AWS D1.2 Structural Welding-Aluminum, utilizing 3/64” ER4043 Welding Wire, ANSI/AWS A5.10.

2. MATERIALS

2.1 GENERAL

The Contractor shall submit for approval by the CITY OF PORT ORANGE, all he/she intends on using for the construction of this project, as well as any alternate materials.

The CITY OF PORT ORANGE will be allowed access to all sites where materials pertaining to this contract are manufactured or constructed for purposes of inspection.

Materials delivered and stored at either the manufacturing facility, staging area, or jobsite shall be properly stored on dunnage or by other appropriate means to prevent direct contact with the ground and unnecessary damage.

2.2 CONCRETE FLOATS

Manufacturing

The float manufacturer has a minimum of ten (10) consecutive years' experience in the design and manufacturing of concrete floats as their primary business.

The manufacturing facility shall be located in the United States and meet the requirements for the designation of "Made in the USA" as designated by the US Federal Trade Commission. The facility shall be designed to provide the proper environment and physical conditions necessary for float casting. The facility shall provide adequate work space, equipment, level casting surfaces, and protection from direct sunlight, wind, moisture and freezing.

The manufacturing facility must have an ongoing quality management system. This quality system must be regularly assessed and currently certified as meeting the ISO 9001 Standard. The scope of this certification must be for the design and manufacture of floating docks and pertain to the company or portion of the company providing the products and services for the project. The registrar providing this certification must be accredited according to EN 45012.

Float modules shall be cast monolithically in a single pour. There shall be no cold joints of any type. All modules are to have concrete bottoms and walls.

Float modules shall have a minimum deck thickness of 2" inches and a minimum side wall, end wall thickness of 1-1/2" and bottom thickness of 1-1/4" inches.

Forms

Floats shall be cast in steel forms, with a smooth, true surface.

Forms shall be designed in such a way to prevent unsightly finished surfaces or definite lines that could result in crack planes. Any rough edges, form marks, or defects shall be cleaned, ground smooth, or patched.
Float forms shall have a tolerance of not more than 1/4 inch from the dimensions shown on the shop drawings. Floats cast from forms more than ½" out of square (when measured diagonally) shall be rejected.

Concrete shall be vibrated internally and/or externally to assure a smooth dense finish. The placement will be such that the concrete float is monolithic with no cold joints in any part of the finished float.

Concrete Mix Design

Prior to the manufacturing of any flotation units, the concrete mix design shall be approved by the CITY OF PORT ORANGE.

Concrete shall have a minimum twenty-eight (28) day compressive strength of 5,000 psi, per ASTM C-94. Floats made of concrete with less than specified strength may be rejected by the CITY OF PORT ORANGE.

The mix shall contain a minimum of 611 pounds (six and one-half sacks) of Portland cement per cubic yard, either Type I or Type II modified, and low alkali. Type III cement may be used if the Tri-Calcium Aluminate of the cement is certified by the manufacturer to be between five (5) and eight (8) percent, and alkali content (Na20) and (K20) is less than 0.6 percent.

Concrete for the flotation units shall contain polypropylene fibrous reinforcement in the deck area at a rate recommended by its supplier.

The theoretical concrete unit weight shall not be more than 120 pounds per cubic foot.

Coarse and fine aggregates shall conform to ASTM C-33-86, ASTM C-330 lightweight aggregates for structural concrete.

All concrete shall be air-entrained from four (4) to seven (7) percent and shall be tested in accordance with ASTM C-138, C-173, or C-231.

Water/cement ratio shall not exceed 0.45 for light-weight concrete.

Slump range shall be three (3) inches to six (6) inches when tested in accordance with ASTM C-143-78.

Concrete Testing

All concrete testing shall be done under the guidance by certified personnel. Certification shall be in accordance with the National Ready Mix Concrete Association guidelines or equivalent. All concrete testing methods shall be done in accordance with the respective ASTM specifications.

Four (4) compressive test cylinders shall be taken daily per mix, cured, and tested by either an independent testing laboratory or by an on-site, CITY OF PORT ORANGE approved, certified testing facility. Test results will be submitted on one (1) each,

seven (7) day; one (1) each, 14 day, one (1) each, twenty-eight (28) day; and one (1) hold cylinder.

Unit weight and entrained air tests will be taken daily from the same material sample used for the compressive test cylinders.

Daily concrete cylinder test reports shall be submitted to the CITY OF PORT ORANGE on a job complete basis. All concrete testing shall be done at the Contractor's expense.

Concrete Reinforcement

Galvanized welded wire fabrication used as concrete reinforcement shall be 2" X 2" - 14/14. Welded wire fabric is required in the deck and the bottom sections with a minimum of a two (2) inch return to the sides and ends. Where splicing occurs, the overlap will be a minimum of four (4) inches. Galvanized wire mesh shall meet ASTM A-185.

Reinforcing steel bars shall be grade 40 or 60, conform to ASTM 615, and shall be epoxy coated in accordance with ASTM A775 or galvanized in accordance with ASTM A 767.

Expanded Polystyrene Core (EPS)

The closed cell expanded polystyrene core used inside the concrete unit shall meet Federal Specification C-578-85, which superseded Federal Specification HH-I-524C. The expanded polystyrene core must be fully encapsulated by concrete (all six sides).

The foam shall weigh between .95 and 1.10 pounds per cubic foot.

EPS to have a maximum absorption of three (3) percent by volume as tested by ASTM Method C-272.

The foam core shall be held in a true position during the casting operation with an allowable variation of 1/8 inch from the dimensions shown on the shop drawings.

Foam billets will have a dimensional tolerance of plus 0.125 inch and minus 0.125 inch.

Foam core may not have more than ten (10) percent reground EPS foam material. Reground foam pieces shall not exceed 3/8 inch in diameter.

Foam core shall be made up of not more than four (4) laminated

sections.

The laminated foam core shall be glued with low solvent glue, and shall be strapped to prevent delamination during transportation and handling.

No horizontal lamination may occur in the upper ten (10) inches of the foam core.

Utility Raceways

Section deleted, Not Applicable.

FRP Thru-Rod Connections

The minimum dimension for all thru-rods for structural attachment is 3/4-inch thread diameter.

All thru-rods shall be placed within PVC sleeves cast in the float units. The maximum inside diameter of PVC shall not exceed 7/8 inch.

All cast in inserts will be stainless steel, 3/4-inch diameter, with a welded loop or horizontal restraining bar.

Walers shall be securely fastened to the concrete floats using fiber reinforced plastic (FRP) of high strength pultruded rods. At the time of manufacture the pultruded tie rods shall meet the following specifications:

1. Profile Dimensions and Tolerances
    - Diameter 0.782 ± 0.008 in
    - Nominal weight 0.405 lb/ft ± 5% (weight is for rod before grinding)
    - Density (nominal) 125 lb/ft3 ± 5%
    - Cut length Customer advised length ± 0.1 in up to 6.6 ft lengths ± 0.2 in for lengths above 6.6 ft.
    - Straightness Customer advised length ± 0.1 in up to 6.6 ft lengths ± 0.2 in for lengths above 6.6 ft.

2. Raw Materials
    - Matrix based on hybrid epoxy vinyl ester resin
    - ECR glass

3. Resin matrix properties
    - Glass transition temperature of resin ≥ 291 ˚F
    - Onset reaction temp ≥ 212 ˚F
    - Heat of cure ≥ 72 kJ/lb
    - Peak Exotherm ≥ 248 ˚F

4. Reinforcement properties
   - Direct roving's, Boron-free ECR glass ASTM D5780
   - Single filament tensile Strength 450 to 550 ksi, ASTM D2101
   - Young's modulus 11.5 to 11.7 msi Sonic method

5. Physical Properties
   - Transverse shear > 13.5 kip (single sided shear), ASTM D7617/D7617M
   - Nut pull off strength > 15.7 kip, In house test
   - Dynamic Flexural Modulus > 6 msi, ASTM E1640
   - Moisture absorption < 0.1%, ASTM D570 Method 7.1
   - Glass transition temperature of finished rod measured by Dynamic Mechanical Thermal Analysis 284˚F Storage modulus curve, 320˚F curve peak ASTM E1640
   - Cure Ratio >95% CSA S870-10

6. Other
   - Color - Dark Grey
   - Surface finish - Surface to be free from cracking, loose fibers and blistering.

7. Test Certificate. A test certificate for each production batch shall include:
   - QA/QC Inward Raw Materials
   - Glass type
   - Resin type
   - Resin release number
   - Incoming Resin QC Differential Scanning Calorimeter (DSC)
   - Test & Analysis (ASTM E1356)
   - Onset reaction temperature
   - Heat of cure
   - Peak exothermic
   - Glass transition temperature (Tg)
   - QA/QC Product and Production
   - Surface finish
   - Diameter (Ø)
   - Product glass transition temperature (Tg) (ASTM E1640)
   - Nut pull off strength
   - Transverse shear strength
   - DSC and DMTA Thermogram graphs

All bolted connections shall include ¾" (nominal) nylon nuts

manufactured from a high toughness 50% glass filled nylon 6, and contain high quality UV stabilizers for maximum longevity.

A minimum of four (4) thru-rods per float unit are required, with a minimum average of one (1) thru-rod per two (2) lineal feet of float length. The quantity and configuration of the thru-rods will be determined by the float system structural engineer's load calculations on each dock section.

Thru-rods shall be placed through each float unit within six (6) inches of each end of that unit, and within six (6) inches of each lumber splice.

No connecting device shall protrude beyond the fascia into the berth area. Any connecting device protruding above the surface of the deck shall have a low, rounded profile.

All nuts at triangle frame connections shall Bracket ¾" (nominal) Nylon Nuts. Nuts at the triangle frame shall be re-tightened immediately before receiving utility covers.

Nylon Nuts

1. Raw Materials:

Nylon nuts shall be manufactured from a high toughness 50% glass filled nylon 6, which contains high quality UV stabilizers for maximum longevity.

2. Physical Properties: Nut pull off strength shall be >15.7 kip

3. Other:
    - Nylon nuts shall be black in color.
    - All internal surfaces shall be smooth.
    - Hexagonal surfaces shall be textured for increased grip; all other surfaces shall be smooth. Small injection marks are acceptable.

Deck Finish

The float deck surface shall be trowel finished with a steel trowel and a slip-resistant finish applied transversely to the walking surface.

Contractor shall establish finishing methods and procedures to insure an even and consistent broom or screed finish on all deck surfaces.

All top edges shall have a 3/8 inch tooled radius with a minimum 1-1/2 inch wide smooth hard steel finished face.

Outside top edges and corners shall be filed smooth.

All work shall be performed by persons experienced and skilled in their trade.

Curing, Handling, and Storage

Except as otherwise approved, floats shall be cured for a minimum of seven (7) days or until they have reached 80% of design strength before transporting or assembling.

The Contractor shall select his own method of curing and be responsible for the result, except that all curing shall include the application of a curing compound as soon as practical after finishing and that the concrete modules be placed under cover with complete protection from direct sunlight, wind, and freezing for a period of three (3) days or until they have reached 70% of design strength.

Curing compound referenced shall meet the following requirements:

- Must be a balanced combination of sodium, potassium and meta silicate compounds with a surface reducing agent.
- Must not contain any chlorides, waxes, resins or oils.
- Must not separate or settle out.
- Must not leave a residue on the concrete that would prevent the application of sealers or epoxies.
- Must combine chemically with the free lime in concrete to form a barrier to reduce moisture evaporation to a level that allows the complete hydration of the concrete.

The Contractor shall take care in establishing handling methods to avoid damage to floats during form removal, storage, assembly, and installation. Storage of flotation units shall be on level surfaces, and it shall be the responsibility of the Contractor to determine how high to stack units to avoid damage. Care shall be taken to avoid damage caused by over-stacking.

Floats shall be protected against damage from any cause.

Any damaged units shall be rejected and removed from the assigned job.

Cracks

Concrete cracking shall be minimized through proper design and control methods. However, it is typical for precast concrete to develop cracks. The structural nature of concrete is that the concrete must crack in order to mobilize the steel reinforcing.

Cracks that are determined to be structural in nature by the float system design engineer and not located in the deck of the module shall be V-cut out and patched with a non-shrink patching compound approved by the engineer. Cracks that are determined to be structural in nature by the float system design engineer which are located in the deck of the float module shall be patched in accordance with methods and materials approved by the CITY OF PORT ORANGE and the design engineer on a case by case basis.

The design engineer shall determine if excessive cracking in a single flotation unit shall be cause for rejecting that unit. Rock pockets exceeding one (1) inches in diameter and/or 1/2 inch in depth and/or honeycombing, shall be patched with an approved non-shrink grout of a color similar to the cured concrete. Any pockets which expose mesh or rebar shall be chipped out, cleaned, and filled with an approved epoxy patching compound.

Float Weight

The weight of the complete flotation units shall not vary from the theoretical weight or mean weight of all similar units by more than six (6) percent.

Submit program to verify actual float weights, quantity to be weighed, and method of record keeping.

Float Identification

All floats are to be clearly identified on one side between the bottom of the waler and the waterline with the date of manufacture, specific float type, and job number.

2.3 LUMBER

All timber walers and structural lumber shall be of Southern Yellow Pine; "No. 1" or better in accordance with either the Southern Pine Inspection Bureau or the Timber Products Inspection Bureau grading rules.

Lumber shall be fabricated accurately to provide uniform gaps and butt joint connections. Lumber splices shall not exceed 1/2 inch between adjoining ends.

All walers, fascia, spacers, plywood, or any other member, which is subject to foot traffic, shall be flush with the concrete walking surface.

2.4 LUMBER TREATMENT

All lumber shall be pressure preservative treated with CCA to .6 pound retention after fabrication.

All lumber, with the exception of laminated beams, will be cut to length and all holes drilled prior to pressure treatment as far as is possible.

Tie bands used for delivery must have plates between the bands and the wood to prevent crushing. Bundle identification shall be done so as not to stain lumber surfaces.

2.5 STEEL

All structural steel channels, angles, and plates shall be fabricated from stainless steel conforming to ASTM A-240.

All steel fabrication and welding will be performed in a facility currently certified as meeting the ISO 9001 Standard. All structural steel welders shall be qualified in accordance with requirements of ANSI/AWS D1.1, 2010 Structural Welding Code.

All structural steel welding shall be completed in accordance with requirements of ANSI/AWS D1.1, 2010 Structural Welding Code-Steel, and utilizing 0.035 welding wire AWS A5.18, ABS ER70S-6.

All aluminum welding shall be completed in accordance with requirements of ANSI/AWS D1.2 Structural Welding-Aluminum, utilizing 3/64” ER4043 Welding Wire, ANSI/AWS A5.10.

2.6 HARDWARE

Bolts, nuts, washers, and thru-rods shall be 316 stainless steel, in accordance with ASTM A-193 and A-194, and have a minimum of 1-1/2 inch of thread.

Washers shall be used with all nuts and bolts, which bear on wood or steel. Round plate washers shall be used on all thru-rods bearing on wood surfaces. Cut washers shall be used on all surfaces bearing on steel surfaces.

2.7 WELDMENT AND TRENCH COVER PANELS

Cover panels, which provide continuous walking surfaces with the

concrete deck, shall be of medium-density copolymer polyethylene or FRP, specially formulated to provide toughness and durability in a marine environment. The plastic shall contain UV stabilization for optimum performance in direct sunlight and weigh a minimum of 0.0342-lbs/cubic inch. The material shall be fabricated with a non-slip surface molded in the panels.

The basis of payment for **Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles)** is per SQUARE FOOT. Payment shall be made once the floating docks are installed and have been accepted by the ENGINEER and the CITY OF PORT ORANGE.

Item 8 **Fixed Concrete Dock:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware needed to properly construct the fixed concrete accessory docks as indicated in the construction plans. The concrete accessory docks consist of six main components: concrete stem wall sides, concrete footers, concrete top slabs, structural fill for the portion enclosed by the side walls and top surface, a 16" thickness layer of No. 57 bedding stone and 3"x 8" timber fenders with rub rails on the waterward sides of the structures. The bid price for this item shall also include any dewatering measures, including but not limited to cofferdams, pumps, bypass piping and wellpoints, required to achieve specified compaction values and properly construct the accessory docks.

The CONTRACTOR shall furnish No. 57 bedding stone meeting the requirements of Section 901 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction (Latest Edition). Wrap bedding stone with geotextile fabric meeting the requirements of Sections 514 and 985 of the FDOT Standard Specifications. Place No. 57 stone bedding layer in two (2) 8-inch lifts underneath areas designated in the construction plans and tamp for a total compacted thickness of 16 inches. Check finished stone bedding layer for surface trueness and fill and compact all low spots to achieve a true finished grade as indicated in the construction plans.

The bedding stone material shall be reasonably free of fines (maximum of 5% fines by weight) shall be permitted. The stone shall be free of organics and other debris when delivered to the project site, and all precautions must be taken to keep rock clean upon delivery to the project area.

The stem wall sides shall be constructed in accordance with the details shown in the construction plans, utilizing the concrete mix design specified in the plans. All reinforcing steel shall have a minimum of four inches concrete cover; the CONTRACTOR shall notify the ENGINEER a minimum of 48 hours in advance of pouring concrete so an inspection can be made of the formwork and reinforcing steel prior to pouring concrete. Any concrete poured prior to this inspection being conducted shall be removed and replaced at the CONTRACTOR's expense. The CONTRACTOR shall ensure sufficient tie downs, chairs and other components are used on reinforcing steel and that sufficient care is taken while pouring concrete so that the reinforcing steel does not move during the pour.

The footer slabs shall be constructed in accordance with the details shown in the construction plans, utilizing the concrete mix design specified in the plans. All reinforcing steel shall have a minimum of four inches concrete cover; the CONTRACTOR shall notify the ENGINEER a minimum of 48 hours in advance of pouring concrete so an inspection can be made of the formwork and reinforcing steel prior to pouring concrete. Any concrete poured prior to this inspection being conducted shall be removed and replaced at the CONTRACTOR's expense. The CONTRACTOR shall ensure sufficient tie downs, chairs and other components are used on reinforcing steel and that sufficient care is taken while pouring concrete so that the reinforcing steel does not move during the pour.

Concrete used for the top slabs shall meet the mixed requirements and other requirements detailed in the construction plans. All formwork, expansion/contraction joints, placement and securing of reinforcing steel, etc. shall be in accordance with the construction plans. The top slab shall be broom finished.

Under this Item, the CONTRACTOR is responsible for providing clean structural fill to be placed in the space between the stem wall sides and top slabs meeting the requirements of Group A3 per AASHTO M 145. The CONTRACTOR shall be responsible for providing sieve analysis and Modified Proctor testing (per AASHTO T-180) for all imported fill material. Imported fill shall be placed in 6-inch lifts and compacted to 98% Modified Proctor value per AASHTO T-180. All required geotechnical testing and compaction testing results shall be submitted to the ENGINEER for approval. The CONTRACTOR shall ensure concrete for side stem walls has cured to sufficient strength prior to placement and compaction of fill material to prevent failure of the side walls.

The CONTRACTOR must make submittals of the concrete mix design for stem walls, top slabs, and footer slabs, reinforcing steel and fill material to the ENGINEER prior to purchase of these materials or construction of the accessory docks. Any items or materials placed without this approval shall be replaced by the CONTRACTOR at no additional expense to the CITY OF PORT ORANGE.

The basis of payment for **Fixed Concrete Dock** is per EACH.

Item 9 **Timber Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade):**

The bid price for this item shall include, but not be limited to, the necessary manpower, third-party geotechnical firm for pile installation observation, equipment, materials, hardware and incidentals needed to construct all components of the timber pier, as indicated in the construction plans. Components to be constructed include, but are not limited to timber piles, cap boards, stringers, deck boards, handrail posts, splice blocks, mid-post spacer boards, vertical rails and horizontal rails, etc. All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

The CONTRACTOR shall furnish timber piles meeting the dimensions and specifications indicated in the construction plans. The CONTRACTOR shall submit

shop drawings and technical data sheets for the piles to the ENGINEER for approval prior to ordering or installing piles. Any piles driven without this approval shall be removed and replaced by the CONTRACTOR at the CONTRACTOR;'s expense. The CONTRACTOR shall be responsible providing pile-installation equipment and methodology which is capable of delivering sufficient energy to drive the piles to the design tip elevation without excessive impacts which may damage the piles and shall be responsible for maintaining the equipment in a safe and operable condition. The CONTRACTOR shall submit technical data and specifications on the vibratory or impact hammer to be used for installation to the ENGINEER for approval prior to starting any pile installation activity.

All in-water piles must be wrapped with a mechanically tensioned PVC membrane as per the details in the plans. All pile wraps must have a rolled, positive vertical closure that significantly restricts leeching of pile preservative from the pile into the surrounding environment while preventing oxygenated water from entering the wrap. In addition, all piles must be wrapped with a hermetic top seal (compressed and banded).

Jetting of piles is not permitted without prior approval of the ENGINEER, and in all cases where jetting of piles is approved, the final five (5) feet of the piles must be driven. If solid rock, debris or refusal is encountered prior to achieving design tip elevation, the pile must be tool punched into the strata. The ENGINEER will make the final determination on if refusal is encountered.

Absolutely no piles shall be cut to design top elevation, beyond the top six (6) inches of the pile, which is damaged by driving, without prior written approval of the ENGINEER. If the CONTRACTOR requests to cut off piles, the piles must remain "in-place, as-is", and the ENGINEER notified a minimum of 72 hours in advance so a site visit and recommendations based on observed field conditions can be made. Any pile cut off without prior written approval from the ENGINEER shall be removed and replaced at the CONTRACTOR's expense.

The CONTRACTOR shall have a third-party geotechnical firm observe all pile installation activity and always maintain a pile installation log on the site, and this log shall be available for inspection by the CITY OF PORT ORANGE or the ENGINEER at any time on request. The information to be recorded in the log shall be per "Pile Installation" Note 12 of the General Notes, Sheet C-16 of the construction plans. The CONTRACTOR shall submit the final pile installation logs so the ENGINEER may review them prior to final project acceptance. The ENGINEER shall not make a structural certification without this submittal.

The CONTRACTOR shall survey the location of each pile, and once all piles have been installed, shall submit this survey to the ENGINEER for approval prior to starting any additional work on the observation pier. Any pile located more than three (3) inches from its design position as indicated in the construction plans shall be removed and reinstalled by the CONTRACTOR at no additional cost to the CITY OF PORT ORANGE.

All hardware used for the construction of the dock system must be 316-alloy stainless-steel; under no circumstances will any alternative materials or other

stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all handrail components fight tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to observation pier users from gouges or contact with sharp edges.

The CONTRACTOR must make submittals of the timber, hardware, pile wraps, and stainless-steel pieces, etc. to the ENGINEER prior to purchase or construction. Absolutely no piles shall be cut to final top elevation without the approval of the ENGINEER. Any products or materials manufactured, purchased or installed prior to shop drawing approval will be replaced at the CONTRACTOR's expense if the above noted approvals have not been obtained.

The basis of payment for **Timber Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade)** shall be per SQUARE FOOT.

Item 10 **CMI UC-50 Composite Sheet Pile or Approved Equivalent:**

The bid price for this item shall include, but not be limited to, third-party geotechnical firm for pile installation observation, the necessary manpower, equipment and materials needed to furnish and install the Composite Sheet Pile (CMI UC-50 Composite Sheet Pile or equivalent) as indicated in the construction plans.

The CONTRACTOR is responsible for providing a pile installation methodology that will properly attain the indicated embedment of the sheet piles, and that meets the sheet pile manufacturer's construction requirements and instructions and must submit calculations verifying the methods and procedures for such installation. Jetting of piles is not permitted unless the contractor receives written approval from the ENGINEER of record, and under any circumstances the final five feet of length of all sheets must be driven. Sheet piles must be embedded with the appropriate machinery and the CONTRACTOR is responsible for replacement, at no additional cost to the CITY OF PORT ORANGE, of any broken, cracked or misaligned sheet piles. A copy of the geotechnical report prepared for this project is included in the contract documents; the CONTRACTOR is responsible for being familiar with this report when preparing the pile installation methodology.

The CONTRACTOR shall inspect all sheet piles that are delivered to the site and shall stockpile sheet piles in a manner that ensures sheets are undamaged. It is the CONTRACTOR's responsibility to reject any sheet pile that is delivered to the site damaged to an extent where it is in unusable condition. Any damaged sheets that are driven shall be repaired or replaced in the direction of the ENGINEER, at no additional cost to the CITY OF PORT ORANGE.

The CONTRACTOR shall have a third-party geotechnical firm observe all pile installation activity and is responsible for maintaining up-to-date pile installation logs at all times during the project. In addition to the weekly submittal requirements for installation logs noted in the General Conditions above, the CONTRACTOR shall make the installation logs available for inspection by the ENGINEER and/or CITY OF PORT ORANGE at any time requested. The information to be recorded in the log shall be per "Sheet Pile Installation" Note 12 of the General Notes, Sheet C-16 of the construction plans. The CONTRACTOR shall submit the final pile installation

logs so the ENGINEER may review them prior to final project acceptance. The ENGINEER shall not make a structural certification without this submittal.

Absolutely no sheet piles shall be cut to design top elevation, beyond the top six (6) inches of the pile, which is damaged by installation, without prior written approval of the ENGINEER. If the CONTRACTOR requests to cut off sheet piles, the piles must remain “in-place, as-is”, and the ENGINEER notified a minimum of 72 hours in advance so a site visit and recommendations based on observed field conditions can be made. Any pile cut off without prior written approval from the ENGINEER shall be removed and replaced at the CONTRACTOR’s expense.

The basis of payment for **CMI UC-50 Composite Sheet Pile or Approved Equivalent** shall be per LINEAR FOOT.

Item 11 **Concrete Boat Ramp:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to properly construct the cast in place reinforced concrete boat ramp as indicated in the construction plans. The cost of placing No. 57 stone base, sheet piles, and dewatering necessary to properly prepare and compact base and subbase material shall also be included in the bid price of this item.

After demolition and removal of the existing boat ramp, over excavate the subbase beneath the proposed boat ramp, employing dewatering measures necessary to properly inspect, prepare and compact the subbase layer. The CONTRACTOR is responsible for ensuring discharges from dewatering activity meet State turbidity and other water quality standards. All organics and other unsuitable material shall be removed and replaced with clean structural fill. The CONTRACTOR shall retain tickets for all unsuitable material removed, and tickets for all structural fill imported to the site. Compact the subbase layer to a minimum of 98% of AASHTO T-180 density.

Place No. 57 stone in two (2) 6-inch lifts underneath entire boat ramp area, and compact with a vibratory roller, for a total compacted thickness of 12 inches. Check finished stone bedding layer for surface trueness and fill and compact all low spots to achieve a true finished grade as indicated in the construction plans. The bedding stone material shall be reasonably free of fines (maximum of 5% fines by weight shall be permitted). The stone shall be free of organics and other debris when delivered to the project site, and all precautions must be taken to keep rock clean upon delivery to the project area.

At the pre-construction conference, the CONTRACTOR shall submit a letter designating all sources for the rock to be provided for the project. Each source must provide certified testing data, dated within the last two (2) years, for the rock, indicating its adherence to the requirements listed below. This testing data must be submitted to the ENGINEER for approval prior to ordering or taking delivery of any rock.

- Unit Weight: 150 pounds per cubic foot for limestone per ASTM C 127.
- Absorption: Less Than 5% per ASTM C 127.
- Sulfate Soundness: Less than 12% loss 5 cycles per ASTMC 88.

- LA Abrasion: Less than 45 percent loss at 1000 rev. per ASTM C 535.

If for any reason the CONTRACTOR elects to acquire rock from another source, the ENGINEER must approve of the new source prior to the CONTRACTOR ordering or taking delivery of any rock. The quarry identified as the new rock source shall submit the same testing data as that required from the original source(s). Acceptance of a source for rock does not constitute “blanket” acceptance of all rock material originating from that source. The CITY OF PORT ORANGE and the ENGINEER reserve the right to require testing of any batch of rock delivered to the site to determine if the rock meets project specifications. Such testing, if requested, will be carried out by an FDOT-certified materials testing laboratory. Any products or materials manufactured, purchased or installed prior to shop drawing approval will need to be replaced at the CONTRACTOR’s expense if the corresponding materials are not approved by the ENGINEER.

Filter fabric must be non-woven geotextile, meeting the requirements shown on the details in the plans, and should overlap a minimum of 36 inches where separate pieces come together. Filter fabric shall wrap beneath and around the bedding stone layer to a point sufficient to provide a minimum of five (5) feet of toe-in from the outer rock face on all sides of the finished breakwater structure. The cost of the installed filter fabric shall be factored into the unit cost for the bedding stone.

The CONTRACTOR shall ensure that the concrete mix design for the boat ramp meets the specifications indicated in the construction plans. All rebar shall be covered by 4" of concrete and non-metallic chairs shall be placed liberally to prevent movement during the concrete pour. The CONTRACTOR shall notify the Engineer a minimum of 72 hours in advance of pouring concrete so an inspection of the formwork and reinforcing steel placement can be made. The CONTRACTOR shall place concrete so that movement of reinforcing steel is minimized during the concrete pour.

The CONTRACTOR shall take all steps necessary to ensure the grooves in the boat ramp are constructed as per plan, and that all dowels, expansion joints, contraction joints, etc. are constructed as per plan. Any area of the ramp not grooved properly will be unacceptable and must be removed and replaced at the CONTRACTOR’S expense. It is the CONTRACTOR’S responsibility to ensure that the placement of the coffer dam allows for the appropriate space to properly construct the grooves; no accommodation or changes to the plans will be made if the coffer dam is not placed in a reasonable location. The coffer dam must be located outside of the proposed boat ramp area to allow for final inspection and certification of the finished concrete boat ramp structure. To certify that the concrete boat ramp has been constructed properly, all UC-50 shall be cut flush to top of ramp, as indicated in the construction plans, prior to reintroducing water to the concrete boat ramp. In addition, the CONTRACTOR is responsible for providing testing of the concrete at every pour and providing the ENGINEER with the testing results in a timely fashion.

The CONTRACTOR shall submit a concrete mix design and shop drawings/technical data sheets for all reinforcing steel, microsilica fibers, admixtures and other additives to the ENGINEER for approval prior to purchasing or pouring any concrete. Any products or materials manufactured, purchased or installed prior

to shop drawing approval will need to be replaced at the CONTRACTOR'S expense if corresponding shop drawings are not approved by the ENGINEER.

The CONTRACTOR is responsible for complying with all state, OSHA and other federal regulations governing trench and excavation safety.

The basis of payment for **Concrete Boat Ramp** is per SQUARE FOOT.

Item 12 **FDOT Aluminum Railing – Type 1 Picket Infill Panel:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware needed to furnish and install FDOT Type 1 Panel Picket Infill aluminum pedestrian railing with aluminum ADA grabrails along the concrete beach access ramp and landings as indicated in the construction plans. The CONTRACTOR shall furnish 42" height pedestrian/bicycle railing (aluminum) as per Florida Department of Transportation Standard Plans Index 515-062. Anchor bolts shall be cast in place, 4-bolt anchorage type, Case II per Standard Plans Index 515-062; the CONTRACTOR shall provide 316 stainless steel anchor bolts and washers in lieu of galvanized steel bolts and washers. Provide nylon isolation washers to prevent direct contact between aluminum and stainless steel. The CONTRACTOR shall submit shop drawings and technical data sheets for the pedestrian railing and anchoring hardware to the ENGINEER for approval prior to ordering or installing any components. Any items installed without these approvals shall be removed and replaced by the CONTRACTOR at no additional cost to the CITY OF PORT ORANGE. The CONTRACTOR shall field verify with the ENGINEER of record, the placement of the FDOT aluminum railing prior to installing the product.

The basis of payment for **FDOT Aluminum Railing - Type 1 Panel Picket Infill Panel** shall be per LINEAR FOOT.

Item 13 **Milling (8-Inch Depth):**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware needed to properly mill the existing pavement as indicated in the construction plans.

The basis of payment for **Milling (8-Inch Depth)** shall be per SQUARE YARD.

Item 14 **2-Inch Type S-1, S-2, or Superpave, 12.5 mm:**

The bid price for this item shall include, but not be limited to the required manpower, equipment, materials, and any other items necessary to purchase, import, haul and place Superpave surface course for all locations where asphalt pavement will be constructed, including the roadway and attendant parking area as indicated on the construction plans.

Superpave surface course shall be supplied, installed, tested and accepted in accordance with Section 334 of the FDOT Standard Specifications for Road and Bridge Construction (Latest Edition), and all other sections referenced therein. The CONTRACTOR shall submit a proposed mix design, along with certification from the mix plant that the mix meets or exceeds FDOT requirements, to the ENGINEER

for approval prior to ordering or placing Superpave surface course. Any product placed without this approval shall be removed and replaced by the CONTRACTOR at no additional expense to the CITY OF PORT ORANGE.

The basis of payment for **2-Inch Type S-1, S-2, or Superpave, 12.5 mm** is per TON.

Item 15 **6-Inch Limerock Base Course:**

The bid price for this item shall include, but not be limited to the required manpower, equipment, materials, and any other items necessary to import, mix, place, compact and work to final grade stabilized subbase material to construct asphalt pavement as indicated on the construction plans. The CONTRACTOR shall be responsible for providing clean stabilized subbase material meeting the requirements of Section 160 of the FDOT Standard Specifications, and all sections referenced therein. The CONTRACTOR shall be responsible for providing all testing of subbase material as required by Section 160 of the FDOT Standard Specifications and testing of shall be included in the bid price for this item. Placed stabilized subbase shall meet at minimum LBR value of 40. The bid price for this item shall include all required geotechnical compaction testing, and all required geotechnical testing and compaction testing results shall be submitted to the ENGINEER for approval. No payment shall be made for any subbase material delivered or placed without this approval. The CONTRACTOR shall be responsible for all costs associated with replacement of subbase material rejected by the ENGINEER.

The basis of payment for **6-Inch Limerock Base Course** shall be per SQUARE YARD of subbase material placed and compacted as specified in the construction plans and in these specifications. Payment for materials stored on site shall not be made without the prior approval of the CITY OF PORT ORANGE, and such payment shall be made only for the invoiced value of the materials stored; no mark-ups or builders fees will be paid for stored materials.

Item 16 **Pavement Marking and ADA Signs:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware needed to apply thermoplastic pavement markings and install traffic control and other signage throughout the project area as indicated in the construction plans.

All signage shall meet the requirements of Section 700 of the FDOT Standard Specifications for Road and Bridge Construction (Latest Edition) and all sections listed therein. All striping and marking materials used shall be listed on the FDOT Approved Product List (APL) and shall meet the requirements of Section 711 of the FDOT Standard Specifications for Road and Bridge Construction (Latest Edition) and all sections listed therein. All application equipment, methods and materials testing procedures shall meet the requirements of Section 711 of the FDOT Standard Specifications for Road and Bridge Construction (Latest Edition) and all sections listed therein.

SECTION 711
THERMOPLASTIC PAVEMENT MARKINGS

711-1 Description.
Apply new thermoplastic pavement markings, or refurbish existing thermoplastic pavement markings, in accordance with the Contract Documents.

711-2 Materials.
Use only materials listed on the FDOT Approved Product List (APL) meeting the requirements of the following sections of the FDOT Standard Specifications.

Standard and Refurbishment Thermoplastic	971-1 and 971-5
Preformed Thermoplastic	971-1 and 971-6
High Friction Thermoplastic	971-1 and 971-10
Glass Spheres	971-1 and 971-2

Use sand materials meeting the requirements of 971-5.4.

The Engineer will take random samples of all material in accordance with the FDOT Sampling, Testing and Reporting Guide schedule.

711-3 Equipment.
Use equipment capable of providing continuous, uniform heating of the pavement marking material to temperatures exceeding 390ºF, mixing and agitation of the material in the reservoir to provide a homogeneous mixture without segregation. Use equipment that will maintain the pavement marking material in a plastic state, in all mixing and conveying parts, including the line dispensing device until applied. Use equipment which can produce varying width lines and which meets the following requirements:

1. Capable of traveling at a uniform, predetermined rate of speed, both uphill and downhill, to produce a uniform application of pavement marking material and capable of following straight lines and making normal curves in a true arc.

2. Capable of applying glass spheres to the surface of the completed pavement marking by a double drop application for standard thermoplastic pavement markings and a single drop application for recapping and refurbishment thermoplastic pavement markings. The bead dispenser for the first bead drop shall be attached to the pavement marking machine in such a manner that the beads are dispensed closely behind the installed line. The second bead dispenser bead shall be attached to the pavement marking machine in such a manner that the beads are dispensed immediately after the first bead drop application. Use glass spheres dispensers equipped with an automatic cut-off control that is synchronized with the cut-off of the thermoplastic material and applies the glass spheres uniformly on the entire pavement markings surface with 50 to 60% embedment.

3. Equipped with a special kettle for uniformly heating and melting the pavement marking material. The kettle must be equipped with an automatic temperature control device and material thermometer for positive temperature control and to prevent overheating or scorching of the thermoplastic material.

4. Meet the requirements of the National Fire Protection Association, state, and local authorities.

711-4 Application.
711-4.1 General: Remove existing pavement markings such that scars or traces of removed markings will not conflict with new pavement markings by a method approved by the Engineer. Cost for removing conflicting pavement markings during maintenance of traffic operations to be included in Maintenance of Traffic, Lump Sum.

Before applying pavement markings, remove any material that would adversely affect the bond of the pavement markings by a method approved by the Engineer.
Before applying pavement markings to any portland cement concrete surface, apply a primer, sealer, or surface preparation adhesive of the type recommended by the manufacturer. Offset longitudinal lines at least 2 inches from any longitudinal joints of portland cement concrete pavement.

Apply pavement markings to dry surfaces only, and when the ambient air and surface temperature is at least 50ºF and rising for asphalt surfaces and 60°F and rising for concrete surfaces.
Apply pavement markings to the same tolerances in dimensions and in alignment specified in Section 710-5 of the FDOT Standard Specifications. When applying pavement markings over existing markings, ensure that no more than 2 inches on either end and not more than 1 inch on either side of the existing line is visible.
Apply thermoplastic material to the pavement by extrusion or other means approved by the Engineer.

Conduct field tests in accordance with FDOT FM 5-541.Take test readings representative of the pavement marking performance. Remove and replace pavement markings not meeting the requirements of this Section at no additional cost to the City.

Wait at least 14 days after constructing the final asphalt surface course to place thermoplastic pavement markings. Installation of thermoplastic on concrete requires a clean, dry surface. Follow the manufacturer's recommendations for surface preparation for thermoplastic on concrete. Provide temporary pavement markings during the interim period prior to opening the road to traffic.

711-4.1.1 Preformed Thermoplastic: Apply markings to dry surfaces only and when ambient air temperature is at least 32°F. Prior to installation, follow the manufacturer's recommendations for pre-heating.

711-4.1.2 High Friction Thermoplastic: High friction thermoplastic may be used as an alternative to preformed thermoplastic for special emphasis crosswalk markings. Apply markings only by gravity or air pressure thermoplastic hand liners set-up with double drop bead attachments. Install markings in accordance with the manufacturer's recommendations.

711-4.2 Thickness:
711-4.2.1 Standard Thermoplastic Markings: Apply or recap standard thermoplastic pavement markings for longitudinal lines to attain a minimum thickness of 0.10 inch or 100 mils and a maximum thickness 0.15 inch or 150 mils when measured above the pavement surface.

All chevrons, diagonal and transverse lines, messages, symbols, and arrows, wherever located, will have a thickness of 0.09 inch or 90 mils to 0.12 inch or 120 mils when measured above the pavement surface.
Measure, record and certify on Department approved form and submit to the Engineer, the thickness of white and yellow pavement markings in accordance with FDOT FM 5-541.

The Engineer will verify the thickness of the pavement markings in accordance with FDOT FM 5-541 within 30 days of receipt of the Contractor's certification.
711-4.2.2 Refurbishment Thermoplastic Markings: Apply a minimum of 0.06 inch or 60 mils of thermoplastic material. Ensure that the combination of the existing marking and the overlay after application of glass spheres does not exceed the maximum thickness of 0.150 inch or 150 mils for all lines.

Measure, record and certify on FDOT approved form and submit to the Engineer the thickness of white and yellow pavement markings in accordance with FDOT FM 5-541.

The Engineer will verify the thickness of the pavement markings in accordance with FM 5-541 within 30 days of receipt of the Contractor's certification.

711-4.2.3 Preformed Thermoplastic: Apply 0.125 inch or 125 mils of preformed thermoplastic material.

Measure, record and certify on FDOT approved form and submit to the Engineer the thickness of the pavement markings in accordance with FDOT FM 5-541.

711-4.2.4 High Friction Thermoplastic: Apply lines to attain a minimum thickness of 0.09 inch or 90 mils and a maximum thickness of 0.12 inch or 120 mils, when measured above the pavement surface.

Measure, record and certify on FDOT approved form and submit to the Engineer, the thickness of the pavement markings in accordance with FDOT FM 5-541.

711-4.3 Retroreflectivity: Apply white and yellow pavement markings that will attain an initial retroreflectivity of not less than 450 mcd/lx·m2 and not less than 350 mcd/lx·m2, respectively for all longitudinal lines. All chevrons, diagonal lines, stop lines, messages, symbols, and arrows will attain an initial retroreflectivity of not less than 300 mcd/lx·m2 and 250 mcd/lx·m2 for white and yellow respectively. All crosswalks and bicycle markings shall attain an initial retroreflectivity of not less than 275 mcd/lx·m2. Black pavement markings must have a retroreflectance of less than 5 mcd/lx m2. Measure, record and certify on FDOT approved form and submit to the Engineer the retroreflectivity of white and yellow pavement markings in accordance with FDOT FM 5-541.

711-4.4 Glass Spheres:
711-4.4.1 Longitudinal Lines: For standard thermoplastic markings, apply the first drop of Type 4 or larger glass spheres immediately followed by the second drop of Type 1 glass spheres. For refurbishment thermoplastic markings, apply a single drop

of Type 3 glass spheres. Apply reflective glass spheres to all markings at the rates determined by the manufacturer's recommendations.

711-4.4.2 Chevrons, Diagonal and Transverse Lines, Messages, Symbols, and Arrows: For standard or refurbishment thermoplastic markings, apply a single drop of Type 1 glass spheres. Apply retroreflective glass spheres to all markings at the rates determined by the manufacturer's recommendations.

Apply a mixture consisting of 50% glass spheres and 50% sharp silica sand to all standard thermoplastic crosswalk lines at the rates determined by the manufacturer's recommendations.

711-4.4.3 Preformed Markings: These markings are factory supplied with glass spheres and skid resistant material. No additional glass spheres or skid resistant material should be applied during installation.

711-5 Contractor's Responsibility for Notification.
Notify the Engineer prior to the placement of the materials. At the time of notification, submit a certification to the Engineer with the APL number and the batch or Lot numbers of the thermoplastic and glass spheres to be used.

711-6 Protection of Newly Applied Thermoplastic Pavement Markings.
Do not allow traffic onto or permit vehicles to cross newly applied pavement markings until they are sufficiently dry. Remove and replace any portion of the pavement markings damaged by passing traffic or from any other cause, at no additional cost to the Department.

711-7 Observation Period.
Longitudinal pavement markings are subject to a 180 day observation period under normal traffic. The observation period shall begin with the satisfactory completion and acceptance of the work.

The longitudinal pavement markings shall show no signs of failure due to blistering, excessive cracking, chipping, discoloration, poor adhesion to the pavement, loss of retroreflectivity or vehicular damage. The retroreflectivity shall meet the initial requirements of 711-4.3. The City reserves the right to check the retroreflectivity any time prior to the end of the observation period.

Replace, at no additional expense to the City, any longitudinal pavement markings that do not perform satisfactorily under traffic during the 180 day observation period.

711-8 Corrections for Deficiencies.
Recapping applies to conditions where additional pavement marking material is applied to new or refurbished pavement markings to correct a thickness deficiency. Correct deficiencies by recapping or removal and reapplication of a 1 mile section centered around the deficiency, as determined by the Engineer, at no additional cost to the City.

711-9 Submittals.
711-9.1 Submittal Instructions: Prepare a certification of quantities, using the

City's current approved form. Submit the certification of quantities to the Engineer. The City will not pay for any disputed items until the Engineer approves submittal.

Painted Pavement Markings per FDOT Standard Specifications for Road and Bridge Construction section 710 can be approved equivalent product. CONTRACTOR must submit shop drawings to the ENGINEER of record for approval that the paint is an approved equivalent product prior to ordering and installing pavement markings.

The basis of Payment for **Pavement Marking and ADA Signs** shall be per LUMP SUM.

Item 17 **Concrete Bumper Guards:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other needed provisions to install parking stops as indicated in the construction plans.

The CONTRACTOR may choose to install pre-cast concrete bumper guards that are delivered to the site; if the CONTRACTOR chooses to use pre-cast concrete bumper guards, shop drawings must be submitted to the ENGINEER for approval prior to ordering. Any parking stops purchased or installed without the approval of the ENGINEER shall be replaced by the CONTRACTOR at no additional expense to the CITY.

The basis of payment for **Concrete Bumper Guards** shall be per EACH.

Item 18 **Bollards:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, and other needed provisions to install steel pipe bollards as indicated in the construction plans.

The CONTRACTOR shall furnish 4-inch diameter, 42-inch height steel pipe bollards. The bollards shall have removable plastic caps and shall be filled with concrete once placed. The bollards shall be of an embedded design. The bollards shall be furnished with a powder coated, safety yellow color finish. The CONTRACTOR shall submit shop drawings and installation instructions for the selected bollards to the ENGINEER for approval prior to ordering or installing bollards. Any bollards installed without this approval shall be removed and replaced at the CONTRACTOR's expense.

The basis of payment for **Bollards** is per EACH.

Item 19 **Environmental Signs and Information Kiosk:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and hardware to furnish and install the protected species information kiosk as indicated on Sheet C-19 of the construction plans.

CONTRACTOR must provide all items including but not limited to a printer's proof of the sign placard, a proposed layout of the kiosk, and shop drawings and technical data sheets for placards, posts, mounting hardware and the monofilament fishing line disposal bin, to the ENGINEER for approval prior to ordering and installing any

components. Assembly and installation shall be in accordance with instructions and requirements listed on Sheet C-19 of the plans. Any products or materials purchased or installed prior to shop drawing approval will need to be replaced at the CONTRACTOR's expense if the corresponding products or materials are not approved by the ENGINEER.

The basis of payment for **Environmental Signs and Information Kiosk** is LUMP SUM.

Item 20 **Concrete Flush Curb:**

The work specified in this section shall include, but not be limited to, the required manpower, equipment, materials and other costs associated with construction of environmental curb as per the plans.

The environmental curb shall be 12 inches wide by 12 inches deep, with a finished top surface flush with the adjacent asphalt payment. The CONTRACTOR shall furnish concrete meeting the requirements listed below. The mix design shall be submitted to the ENGINEER for approval prior to ordering or placing any concrete. Any curbing constructed without this approval shall be rejected, and the CONTRACTOR shall remove and replace it at no additional cost to the CITY OF PORT ORANGE.

Environmental Curb Concrete Mix Specifications

- Compressive Strength (28-day Min.) 4,500 PSI
- Water to Cement Ratio <= 0.45
- 1.5 lb/cubic yard fibermesh 150 virgin homopolymer polypropylene fiber; no olefin materials.

The CONTRACTOR shall provide light broom finish to all placed flush curb concrete. The CONTRACTOR shall saw cut joints, as indicated in the construction plans. The CONTRACTOR shall submit all compressive strength and compaction testing reports to the ENGINEER for approval.

All concrete must be thoroughly vibrated to the bottoms of the forms while pouring, and no concrete shall be poured if a working vibrator is not present on the job site. Any concrete with excessive honeycombing or voids shall be rejected by the ENGINEER and removed and replaced at the CONTRACTOR's expense.

The basis of payment for Concrete Flush **Curb** shall be per LINEAR FOOT.

EJCDC Construction and Survey Drawings
on file with Project Engineer, Curtis Todd

Consisting of 25 Pages

EJCDC Addendum No. 1

consisting of 2 pages

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

ADDENDUM # 1
April 16, 2025

ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated March 28, 2025 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting a bid and acknowledge such in the bid documents.

A. CHANGES TO THE ITB:

SURVEY DRAWINGS are hereby added to and now part of Attachment 3 Construction Drawings. SURVEY DRAWINGS are posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at https://www.port-orange.org/bids.aspx.

The following language is hereby added to **Section 6 – Special Requirements/Instructions:**
LIQUIDATED DAMAGES
Contractor shall pay Owner $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified for Substantial Completion (375 days), until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

B. CLARIFICATIONS

None

C. QUESTIONS AND ANSWERS

Question #1: Attachment 3 Construction Drawings – Can you please provide the missing Survey Drawings 1 thru 4?
ANSWER: There are three drawings on the separately posted document titled SURVEY DRAWINGS. Please refer to **A. CHANGES TO THE ITB** of this addendum. SURVEY DRAWINGS are posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at https://www.port-orange.org/bids.aspx.

Question #2: The documents indicate $0.00 liquidated damages. Please confirm, does the project have liquidated damages?
ANSWER: Contractor shall pay Owner $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified for Substantial Completion (375 days), until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to

complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

In all other respects, except as specifically stated herein, the subject ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer
jcastro@port-orange.org

EJCDC Exhibit No. 1
Contractor's Schedule of Unit Prices
Consisting of 1 page

(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Name of Business:	East Coast Marine Construction & Design
Contact Person:	John Zemball
Email Address:	john@eastcoastmarineconstruction.com
Authorized Signature:	

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

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization (Including Dewatering)	LS	1		$ 128,887.00 -
2	Construction and As-Built Survey	LS	1		$ 22,149.00 -
3	Vibration Monitoring	LS	1		$ 16,690.00 -
4	Environmental Compliance (Including Turbitidity Control)	LS	1		$ 26,051.00 -
5	Demolition, Hauling, and Disposal	LS	1		$ 138,037.00 -
6	Aluminum Gangway (30' x 5')	EA	4	$ 21,648.00	$ 86,592.00 -
7	Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles)	SF	960	$ 237.69 -	$ 228,182.40 -
8	Fixed Concrete Access Dock	EA	3	$ 48,321.00	$ 144,963.00 -
9	Timber Access Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade)	SF	320	$ 240.39 -	$ 76,924.80 -
10	CMI UC-50 Composite Sheet Pile or Approved Equivalent	LF	242	$ 703.77 -	$ 170,312.34 -
11	Concrete Boat Ramp	SF	6,560	$ 69.62 -	$ 456,707.20 -
12	FDOT Aluminum Railing - Type 1 Picket Infill Panel	LF	232	$ 75.46 -	$ 17,506.72 -
13	Milling (8-Inch Depth)	SY	2,178	$ 5.80 -	$ 12,632.40 -
14	2-Inch Type S-1, S-2, or Superpave, 12.5 mm	TN	240	$ 218.46 -	$ 52,430.40 -
15	6-Inch Limerock Base Course	SY	2,178	$ 18.23 -	$ 39,704.94 -
16	Pavement Marking and ADA Signs	LS	1		$ 6,732.27 -
17	Concrete Bumper Guards	EA	22	$ 250.27 -	$ 5,505.94 -
18	Bollards	EA	4	$ 940.43 -	$ 3,761.72 -
19	Environmental Signs and Information Kiosk	LS	1		$ 5,470.62 -
20	Concrete Flush Curb	LF	60	$ 190.92 -	$ 11,455.20 -
				TOTAL PRICE:	$ 1,650,695.95

LEGEND
EA - EACH
LF - LINEAR FEET
LS - LUMP SUM
SF - SQUARE FEET
SY - SQUARE YARD
TN - TON

EJCDC Exhibit No. 2
Contractor's Submittal
On file with Office of City Clerk
Consisting of 53 pages

EJCDC Exhibit No. 3
ITB 25-12
on file with Office of the City Clerk
Consisting of 336 pages

EJCDC Exhibit No. 4
ITB 25-12
General Decision Number FL20250232 03/14/2025Davis-Bacon Wage Determination

Consisting of 6 pages

"General Decision Number: FL20250232 03/14/2025

Superseded General Decision Number: FL20240232

State: Florida

Construction Type: Building

Counties: Flagler and Volusia Counties in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	01/24/2025

2 01/31/2025
3 03/14/2025

ASBE0067-003 01/01/2021

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 30.12	13.11

ELEC0756-005 09/02/2024

	Rates	Fringes
ELECTRICIAN	$ 28.42	3%+13.10

* ELEV0139-002 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC	$ 53.73	38.435+a+b

FOOTNOTE:
A. Employer contributions 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; Employer contributions 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

B. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; The Friday after Thanksgiving Day; and Christmas Day.

ENGI0487-022 07/01/2016

	Rates	Fringes
OPERATOR: Forklift	$ 23.25	9.20
OPERATOR: Mechanic	$ 32.05	9.20
OPERATOR: Oiler	$ 23.50	9.20

ENGI0673-016 05/01/2024

	Rates	Fringes
OPERATOR: Crane		
Gantry Crane; Bridge Crane	$ 36.00	15.10
Tower Crane; Crawler Crane; Truck Crane; Hydro Crane	$ 36.00	15.10

IRON0402-001 10/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 28.90	15.66

PLUM0295-002 01/01/2025

	Rates	Fringes
PLUMBER	$ 41.60	22.68

PLUM0295-005 01/01/2025

	Rates	Fringes
HVAC MECHANIC (Includes Pipe and Unit Installation)	$ 33.90	15.15

SFFL0821-004 01/01/2025

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 34.03	23.70

SHEE0015-006 07/01/2023

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation)	$ 25.75	16.92

* SUFL2014-041 08/16/2016

	Rates	Fringes
CARPENTER	$ 17.92	0.00
CEMENT MASON/CONCRETE FINISHER	$ 19.00	0.00
IRONWORKER, REINFORCING	$ 22.81	11.58
IRONWORKER, STRUCTURAL	$ 21.87	0.00
LABORER: Common or General	$ 11.61 **	0.00
LABORER: Mason Tender - Cement/Concrete	$ 12.00 **	0.00
LABORER: Pipelayer	$ 15.00 **	0.54
OPERATOR: Backhoe/Excavator/Trackhoe	$ 17.80	2.81
OPERATOR: Bulldozer	$ 15.40 **	1.90
OPERATOR: Grader/Blade	$ 18.97	0.00
OPERATOR: Loader	$ 16.30 **	0.00
OPERATOR: Roller	$ 14.43 **	4.78
PAINTER: Brush, Roller and Spray	$ 13.54 **	0.00
PIPEFITTER, Excludes HVAC Pipe and Unit Installation	$ 23.16	10.34
ROOFER	$ 16.59 **	0.00
TILE SETTER	$ 17.25 **	1.74
TRUCK DRIVER: Dump Truck	$ 12.95 **	2.28
TRUCK DRIVER: Lowboy Truck	$ 14.24 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

EJCDC Exhibit No. 5
Community Development Block Grant Program ("CDBG")
Operating & Procedures Manual

Consisting of 13 pages

City of Port Orange

Community Development Block Grant Program (CDBG)

Operating & Procedures Manual

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Summary of the Community Development Block Grant (CDBG) Program:

This section summarizes the National Objectives, Eligible and Ineligible Activities, and citizen participation requirements of the CDBG program. For a more complete description, consult the Code of Federal Regulations, Title 24, Part 570.200(a)(2) and (3), 570.200-570.207, 570.506.

The primary objective of the Community Development Block Grant (CDBG) Program is the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate- income. Funds must be used to carry out activities that will meet one of the three National Objectives:

1. Benefit to low- and moderate- income persons
2. Prevention or elimination of slums or blight, or
3. Meet an urgent need

At least seventy percent (70%) of the total CDBG funds expended must be used for activities that benefit low- and moderate- income persons.

Basic Eligible Activities – 24 CFR 570.201

- Acquisition of Real Property – subject to limitations of 570.207
- Housing Rehabilitation – subject to 570.202
- Code Enforcement
- Public Facilities and Improvements – such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes
- Removal of Architectural Barriers – ADA Compliance/Handicap Access for public and/or private, qualifying projects
- Public Services – subject to 15% cap of total annual CDBG allocation
- Special Activities by Community-Based Development Organizations (CBDO) – 570.204
- Special Economic Development Activities – 570.203
- Relocation and Demolition

Basic Ineligible Activities – 24 CFR 570.207, 570.207(A), 570.201(e), 570.201(e)(1), (2), 570.203, 570.204, 570.209, 570.205, 570.206

- Buildings used for the general conduct of government
- General government expenses
- Political activities

The following activities may not be assisted unless certain criteria are met or they are carried out under the authority of 570.203 or 570.204:

- Purchase of construction equipment, purchase of furnishings and personal property, unless part of a public service activity or necessary for use by a grantee in the administration of the CDBG program

- Repair, operation, and maintenance of public facilities, improvements or services, except expenses associated with eligible public service activities, interim assistance, and office space for CDBG program staff
- New housing construction, except under the special provisions provided under 570.207(b)(3)(i)-(ii)
  Income payments of a subsistence nature

The City of Port Orange prioritizes: Affordable housing, Infrastructure, Facility Improvements, and Disaster recovery/relief

Citizen Participation Plan:

The City has completed a Citizen Participation Plan. This is located on the City's website at www.port-orange.org. A copy is also available in the City's Community Development office located on the second floor of City Hall at 1000 City Center Circle, Port Orange, Florida. This plan details the efforts to include and encourage public involvement in the development of the CDBG program.

Specifically, the City shall hold public meetings to solicit citizen views about community development needs.

How to Apply for CDBG funds:

The City of Port Orange practices an open process for selection of award of CDBG funding, unless otherwise noted in the Consolidated Plan/Action Plan. Projects will be considered based on eligibility of project, priority of project within the City's adopted Consolidated Plan and availability of funds left in the program as long as goals and objectives meet those in the Consolidated Plan/Action Plan. Program year begins October 1 and ends September 30.

If a proposed project meets a national objective and is considered an eligible activity, required information to be submitted must include:

1 Project Narrative/Description
2 Detailed pro-forma state and complete budget, including all operating expenses for the project (if applicable)
3 Articles of Incorporation (if applicable)
4 501(c)(3) documentation (if applicable)
5 List of Board of Directors (if applicable)
6 Authorization to request funds – documentation authorizing submission of request for funds. Must include copy of minutes in which this resolution or motion was recorded (if applicable)
7 Designation of Authorized Official (if applicable)
8 Organizational chart (if applicable)
9 Resume of Chief Program Administrator & Chief Fiscal Officer (if applicable)
10 Financial statement and audit (if applicable)
11 Conflict of Interest Certification (if applicable)
12 Documentation of compliance with national objective

Award Process:

Request for funding is reviewed to ensure project meets all requirements. Unless an RFP process is initiated, requests for funds are accepted on a first come first served basis and subject to fund availability.

In addition to meeting local and national goals, objectives, and eligibility criteria, a project's funding potential may be increased by demonstrating that the applicant has the ability to administer and complete the project; by showing how other forms of funding have been pursued and/or secured; and by exhibiting the project is not a duplication of service already provided in the area.

If determined eligible, a notification letter will be sent to the applicant (if other than an internal request for funding) with a commitment. Ineligible applications will receive notice as to why they did not qualify.

If funding is selected for an agency other than the City, applicant must sign a written contract with the City that details the agreements and requirements set forth in accordance with HUD, OMB and City regulations. In this instance, if the applicant is not awarded the full amount of the request, the scope of the project will be revised accordingly with approval from City staff. Funding cannot be awarded for expenditures made prior to a written contract.

If the applicant is creating affordable housing, a land use restriction agreement will be placed on the property to ensure affordability status at or below 80% of the area median income.

Mortgages may be required with some affordable housing projects.

City of Port Orange Procurement Statement:

All publicly funded procurement activities must be performed within the established policies and procedures of the City.

General guidelines

- . < $500.00 – No quotes required
- . $500 - $2,499.99 – Two verbal or written quotes required
- . $2,500 - $4,999.99 – Three verbal or written quotes required
- . $5,000 - $24,999.99 – Three written quotes required
- . $25,000+ - Formal sealed bids must be presented to City Council for approval

Credit Card Purchase limits:

- . 0-$1000 no quotes- (950 credit card limit)
- . $1000-$2499.00 two verbal or written quotes
- . $2499-$5000 three quotations - verbal or written – City Manager approval
- . $5000 - $24999 three written quotes required – City Manager
- . $25000 up formal bid threshold must be presented to City Council

Environmental Reviews:

Community Development Block Grant regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA). The Port Orange Community Development Block Grant Program must also determine whether a project meets other applicable statutory and regulatory requirements such as those of the Advisory Council on Historic Preservation and the Environmental Protection Agency.

General Responsibilities:

Federal regulations require that the City of Port Orange determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the ultimate effect of a proposed project, including the potential effects of both the CDBG and related project activities. For example, if CDBG funds are being used to extend a water line to a site for a new affordable housing project, then the ultimate effect of the project is not only the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the new housing project. The scope of an environmental review encompasses this definition of a project.

Subrecipient Requirements (if applicable):

If the City chooses to fund a subrecipient to carry out a CDBG-eligible project, the City may ask the subrecipient to assist in the development of the ERR by providing additional information, maps and site data. In some cases, project subrecipients may be asked to complete a biological assessment or gain project clearance from applicable state regulatory agencies.

Subrecipients shall comply with all terms and conditions of and shall implement all required mitigation measured identified in the environmental review record completed for their project. The subrecipient shall ensure that all activities related to their project including property acquisition, construction, and the use of the property/facilities are conducted in accordance with the project scope, as defined in the Environmental Review Record and with the conditions set out in it. The subrecipient shall also retain a copy of any required environmental data and CDBG Program's written notice to proceed in their project files.

CDBG Program Requirements:

The City of Port Orange will complete the Environmental Review Record. The time required for completion of the ERR can vary from weeks to months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment (BA) is necessary, the subrecipient (if any) will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid for from project funds.

After completing the Environmental Review Record, the City may publish a notice of a Finding of No Significant Impact (FONSI) in a local newspaper declaring intent to request release of project funds from HUD. After the release of funds from HUD, the City will send the subrecipient (if any) a contract with a written notice to begin the project. *No project activities or project costs may be incurred until receipt of the notice to proceed.*

Labor Standards:

All CDBG activities are subject to Federal labor standards requirements as identified in all contracts. The Federal labor requirements for which the CDBG program monitors are detailed in this section.

General Requirements:

The labor standards for construction contracts are set forth in four federal statutes (additional information regarding these federal regulations may be obtained by contacting the City's Community Development office or on the internet at www.hud.gov):

Section 110 of the Housing and Community Development Act of 1974, as amended (Title I): All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid at rates not less than those prevailing on similar constriction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This section also applies to the rehabilitation of residential property if property consists of eight or more units.

Davis-Bacon Act: All laborers or mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor; regardless of contractual relationship. Wages must be paid weekly.

Contract Work Hours and Safety Standards Act (for prime contracts over $100,000): The wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard work week of forty hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week.

No person employed on the job site shall be required to work in surroundings or any other working conditions which are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

Copeland Act (Anti-Kickback Law): Whoever by force, intimidation or threat of procuring dismissal from employment or by any other manner whatsoever, induces any persons employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under their contract of employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Monitoring/Enforcing Federal Labor Standards Provisions:

The City of Port Orange CDBG Program will be responsible for monitoring of contractor compliance with the Federal Labor Standards Provisions.

Use of Volunteers:

Volunteers on Community Development Block Grant projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing services to a grant recipient (local government or non-profit organization) without promise, expectation, or receipt of compensation and they are not otherwise employed, at any time, on the project. Federal rules at 24 CFR Part 70.3 cover the use of volunteers on CDBG assisted construction projects. If volunteers are going to be used on the project, the recipient must comply with the following reporting requirements:

- For projects that include paid construction workers, the recipient must record volunteers' names and hours volunteered; and

- For projects that will only use volunteers, recipients must record the number of volunteers and the number of hours worked, collectively.

Additional restrictions regarding use of volunteers on CDBG projects may be enforced by state or local statute, rule or practice.

Finance/Accounting:

This section addresses the financial and accounting aspects of the CDBG program. The following procedures are guidelines that should be adhered to in financial transactions to meet federal requirements.

General Requirements:

In accordance with OMB Circular A-100, A-128 or A-133, the City (and any/all subrecipients) must meet the audit requirements specified therein. Additionally, all financial transactions with CDBG monies are subject to federal audit. The City's CDBG program administrator will insure HUD form 60002, section 3 Summary Reports are filed in accordance with Federal guidelines 24CFR 570.607(b). The City's Finance Department will monitor compliance.

Project Budget:

The approved grant budget contained in the City's grant agreement with HUD identifies the activities determined to be eligible for reimbursement by the grant funds. Grant funds cannot be used for pre-agreement costs that are incurred before the grant contract is signed. The City's financial system for tracking CDBG should:

- Maintain the amounts budgeted for eligible activities in its accounting records
- Include both obligations/expenditures and unexpended/unobligated balances for each line item
- Periodically compare actual obligations and expenditures to-date against planned obligations and expenditures and against projected accomplishments for the grant project

Internal Controls:

Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records which create accountability in the financial management system and safeguard its cash, property, and assets. The internal controls must protect the integrity of the grant funds. At a minimum, the system should provide for adequate separation of duties so that no one person has authority over an entire financial transaction. One person should not have control over more than one of the following:

- Authorization to execute transaction
- Recording the transaction
- Custody of the assets involved in the transaction

Financial Reporting:

The City's financial system will generate regular reports that permit an observer to compare actual expenditures against the approved budget.

Other Financial System Requirements:

The City's financial system will be set up to satisfy an auditor conducting an audit. During an audit, the auditor will examine the records to ascertain if:

- Funds are properly budgeted and approved
- Budget revisions have been documented and approved

- Personnel changes are properly allocated to the block grant and based on payroll documents such as time and attendance records

- All expenditures can be traced to source documents (purchase orders, invoices, cancelled checks)
- Drawdowns have been timely
- Only allowable funds have been claimed on the project
- Property has been managed and inventoried properly
- In-kind costs and costs billed to other funds are clearly documented

Program Income:

Program income is defined as the gross income that has been directly generated from use of CDBG funds. Examples include:

- Gross income from the use or rental of real property that has been acquired, constructed, or improved with CDBG funds. Cost incidentals to the generation of the income are deducted from the gross income
- Interest earned on program income
- Funds collected through special assessments that are made against properties owned and occupied by non-low and moderate-income households where the assessments have been made to recover some or all of the CDBG portion of a public improvement
- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds where the disposition occurs within a five-year period after initial expenditure of the CDBG funds

Fair Housing/ADA:

The CDBG program triggers several additional federal requirements that affect CDBG projects. These requirements include:

1. Fair Housing
2. Handicap Accessibility
3. Lead Based Paint

General Requirements:

1) **Fair Housing Activities** The City, as well as any subrecipients, are responsible for taking necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. Further, the City and any subrecipients should strive to promote a strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including minorities and female-headed households. Possible actions the City, and any subrecipients, can take are as follows:

- Review zoning, building and housing codes and revise if necessary to encourage equal opportunity in housing
- Consider fair housing priorities when developing land use plans for public facilities and housing
- Develop or strengthen local fair housing laws, including enforcement powers and sanctions
- Require private developers and real estate agents to use HUD affirmative marketing and advertising practices

2) **Handicap Accessibility**

A) Americans with Disabilities Act: The Americans with Disabilities Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

B) Section 504 Handicap Accessibility Policy: Section 504 was enacted as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of handicap in all programs and activities receiving federal assistance and, in 1978, it was amended to apply to all programs conducted by the federal government. This regulation provides that no qualified individual with handicaps

shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity that receives federal financial assistance.

The City of Port Orange will provide sign interpreters for public meetings upon request for CDBG program accessibility. All public meeting sites are handicap accessible and auxiliary aids are available for those individuals requesting them. Structures built or rehabilitated must be made handicap accessible. Structures designed, built or altered (rehabilitated) with CDBG funds will conform to the Uniform Federally Accessibility Standards (UFAS), which was published in the Federal Register on August 7, 1984 (49 CFR 13518). The UFAS technical requirements meet or exceed comparable provisions of ANSI 117.1-1980 Specifications for Making Buildings and Facilities Accessible to, and Useable by Physically Handicapped People.

3) **Lead-Based Paint** (applies to residential housing projects/programs) The use of lead-based paint is prohibited. CDBG recipients must certify that no lead-based paint will be used in residential units assisted with CDBG funds and must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint.

The federal requirements pertaining to lead-based paint are contained in 24 CFR Part 35. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD. A copy may be obtained from the City of Port Orange.

EJCDC Exhibit No. 6
Department of Housing and Urban Development ("HUD")
Supplementary Conditions to the Construction Contract

Consisting of 10 pages

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Article 1: Labor Standards

A. **Applicability.** The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

B. **Minimum Wages.** Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

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

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

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

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

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis- Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

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

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid.
Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis- Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired, whether paper (Optional Form WH- 347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347.pdf or its successor site), or electronically pursuant to Program Obligations. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

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

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

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

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

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

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

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

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

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

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

7. **Contract termination and debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

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

10. Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., “Federal Housing Administration transactions”, provides in part: “Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both.”

C. Contract Work Hours and Safety Standards Act.

1. **Applicability and Definitions.** This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than $100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. **Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to

race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

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

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non- metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than $100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR

Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

End of HUD Provisions

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EJCDC Exhibit No. 7
Geotechnical Evaluation dated 12/6/23

Consisting of 17 pages

GEOTECHNICAL EVALUATION

Dunlawton Boat Ramp Dock and Parking Lot
Port Orange, Volusia County, Florida

UES Project No. 0430.2300244.0000
UES Report No. 2039818

December 6, 2023

Prepared For:

Ms. Natalie Tejada
Dredging & Marine Consultants
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Virtual Design Consulting

December 6, 2023

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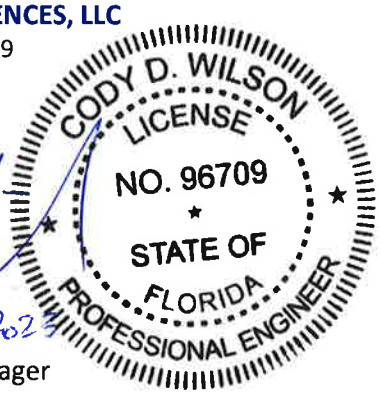
Reference: **GEOTECHNICAL EVALUATION**
Dunlawton Boat Ramp Dock and Parking Lot
Port Orange, Volusia County, Florida
UES Project No. 0430.2300244.0000
UES Report No. 2039818

Dear Ms. Tejada:

UES has completed the geotechnical evaluation for the subject project. This report contains the results of our evaluation, an engineering interpretation of these with respect to the project characteristics described to us, and recommendations for pile installation and stormwater management design.

We appreciate the opportunity to have worked with you on this project and look forward to a continued association. Please do not hesitate to contact us if you should have any questions, or if we may further assist you as your plans proceed.

Respectfully Submitted,
UNIVERSAL ENGINEERING SCIENCES, LLC
Certificate of Authorization No. 549



Cody D. Wilson, P.E. 12/6/2023
Geotechnical Department Manager
Florida Registration No. 96709

Cc: Mr. Shailesh Patel – Dredging & Marine Consultants, Inc.

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1.0 PROJECT DESCRIPTION

Project information has been provided to us in correspondence with you. We were provided with the requested boring locations and boring depths. We understand the proposed project will consist of constructing new dock structures at the Dunlawton Boat Ramp in Port Orange, Florida. The existing dock structures were damaged during the impact of Hurricanes Ian and Nicole in 2022. We anticipate that the proposed dock structures will consist of floating docks constrained by 14-inch square prestressed concrete piles and timber walkways supported by 10-inch diameter pressure treated timber piles. Additionally, we were requested to evaluate the subsurface conditions within the existing dry retention facility that is detaining water.

Our recommendations are based upon the above considerations. If any of this information is incorrect, or if you anticipate any changes, inform UES so that we may review our recommendations.

2.0 PURPOSE AND SCOPE

2.1 PURPOSE

The purposes of this investigation were:

- to investigate the general subsurface conditions at the site;
- to interpret and review the subsurface conditions with respect to the proposed construction;
- to provide general recommendations for pile installation; and,
- to provide recommendations for stormwater management design.

This report presents an evaluation of site conditions on the basis of traditional geotechnical procedures for site characterization. The recovered samples were not examined, either visually or analytically, for chemical composition or environmental hazards. UES would be pleased to perform these services, at your request.

Our investigation was confined to the zone of soil likely to be influenced by the proposed construction. Our work did not address the potential for surface expression of deep geological conditions, such as sinkhole development related to karst activity. A deep geological evaluation requires a more extensive range of field services than performed in this study.

2.2 FIELD INVESTIGATION

2.2.1 BORINGS

The subsurface conditions were investigated with:

- One (1) auger boring, P-1 advanced to a depth of approximately 6 feet below existing grade within the bank of the dry retention pond;
- One (1) auger boring, P-2, advanced to a depth of approximately 3 feet below existing grade within the bottom of the dry retention pond; and

- Two (2) Standard Penetration Test (SPT) borings, B-1 and B-2, advanced to a depth of approximately 40 feet each below mudline at the requested locations adjacent to the existing dock structures.

We performed the SPT and auger borings according to the procedures of ASTM D-1586 and ASTM D-1452 respectively.

The borings were located by our field personnel using measurements from established landmarks and should be considered accurate only to the degree implied by the method used. The location of the borings is presented on the attached Boring Location Plan in Appendix A.

Samples obtained from the borings were transported to our laboratory for further evaluation. Samples of the soils encountered will be held in our laboratory for your inspection for 60 days unless we are notified otherwise.

2.3 LABORATORY TESTING

2.3.1 INDEX TESTING

The soil samples recovered from the soil borings were returned to our laboratory and then a UES Engineer visually examined and reviewed the field descriptions. The soils were classified in accordance with the Unified Soil Classification System (USCS). Tests consisting of percent passing a No. 200 sieve determination were performed to aid in classification of the soils.

3.0 FINDINGS

3.1 SUBSURFACE CONDITIONS

The boring locations and detailed subsurface conditions are illustrated in Appendix A: Boring Location Plan and Subsurface Profiles. The classifications and descriptions shown on the profiles are based upon visual characterizations of the recovered soil samples. Also, see Appendix A: Key to Boring Log, for further explanation of the symbols and placement of data on the Subsurface Profiles. The following discussion summarizes the soil conditions encountered.

The results of the auger borings, P-1 and P-2, generally indicated intermittent layers of fine sand (SP) and fine sand with silt (SP-SM) to the deepest boring termination depth of approximately 6.0 feet below existing grade. As an exception, silty fine sand (SM) was encountered within the upper approximate 2 feet at Boring Location P-2.

The results of the SPT borings, B-1 and B-2, indicated mudline approximately 11 and 9 feet below the water surface at the time of drilling, respectively. The soils encountered generally indicated intermittent layers of very loose to medium dense fine sand with trace silt (SP), fine sand with silt (SP-SM) and silty fine sand (SM) to the boring termination depth of approximately 40.0 feet below mudline. As an exception, very stiff gray clay (CH) was encountered between approximately 33.5 and 38.5 feet below existing grade at Boring Location B-1.

3.2 GROUNDWATER

We recorded groundwater subsequent to drilling at a depth of approximately 2.0 feet below existing grade at Boring Location P-1. Approximately 6-inches to standing water was encountered within the pond bottom at Location P-2 at the time of our evaluation. Based on available published literature,

existing site features, and the results of the borings, we estimate the normal seasonal high groundwater level to be approximately El. +3.0 NAVD88. It should be noted that the estimated seasonal high water level does not provide any assurance that groundwater levels will not exceed these estimated levels during any given year in the future. Should impediments to surface water drainage be present, or should rainfall intensity and duration, or total rainfall quantities, exceed the normally anticipated rainfall quantities, groundwater levels might once again exceed our seasonal high estimates. The depth of the groundwater level encountered at the boring location is presented on the Subsurface Profiles.

We recommend positive drainage be established and maintained on the site during construction. We further recommend permanent measures be constructed to maintain positive drainage from the site throughout the life of the project.

4.0 PILE INSTALLATION RECOMMENDATIONS

The following recommendations are made based upon a review of the attached soil test data, our understanding of the proposed construction, and experience with similar projects and subsurface conditions. If the construction locations change from those discussed previously, we request the opportunity to review and possibly amend our recommendations with respect to those changes.

We anticipate that the proposed docks will be supported by 10-inch diameter pressure treated timber pilings and 14-inch square prestressed concrete piles. These piles will most likely be jetted, or possibly driven into place. We evaluated these piles for full lateral stability. To estimate lateral pile deflection and bending moment in a pile foundation caused by applied lateral loads, it is possible to consider the pile as a free-standing structural member fixed at a certain depth below the ground surface. This structural member can then be analyzed as a cantilever beam. Based on the soil types and anticipated pile type a 10-inch diameter pressure treated timber pile will be considered fixed at a depth of approximately 7 feet below the mudline. The minimum pile embedment length required for full lateral stability for the 10-inch diameter pressure treated timber pile is estimated at 11 feet below mudline. Based on the soil types and anticipated pile type a 14-inch square pre-stressed pile will be considered fixed at a depth of approximately 8 feet below the mudline. The minimum pile embedment length required for full lateral stability for the 14-inch square pre-stressed pile is estimated at 14 feet below mudline. Based on the boring and the understood embedment depths, the piles may be installed through medium dense soil between approximately 8.5 and 28.5 feet below mudline. The contractor should anticipate difficult jetting/driving conditions within this zone. Additionally, we do not recommend that be piles be tipped into the very loose soil zones or within five feet above the very loose soil zones.

Vibrations from pile installation operations need to be considered to preclude any damage to adjacent structures. UES can provide property condition surveys prior to pile installation. Also, UES can provide vibration monitoring services during the installation process to aid in protecting the existing adjacent structures from structural distress.

5.0 STORMWATER MANAGEMENT RECOMMENDATIONS

5.1 GENERAL

For a dry bottom retention facility, performance will be significantly influenced by the soil permeability and the vertical separation between the bottom and the seasonal high groundwater level. A wet retention facility should be excavated to a depth necessary to obtain a sufficient water depth to limit growth of aquatic vegetation.

The silty fine sand (SM), as encountered, is generally considered to have poor drainage characteristics. Partial removal of these soils may be required for pond recovery purposes. All pond backfill material should be clean sandy soils having 5 percent or less fines passing the No. 200 sieve.

If requested, UES can assist in evaluating the facility design exfiltration rates, underdrains and/or groundwater baseflow as pond geometry and stormwater volume requirements become available.

5.2 SOIL PERMEABILITY

Two (2) Laboratory Falling-head Saturated Vertical Permeability Tests were performed on relatively undisturbed soil samples. The samples were obtained using thin-walled tube sampling techniques (Shelby Tube). The results of the tests, in feet per day, describe the coefficients of hydraulic conductivity (Permeability) of the soils and are presented on the attached Subsurface Profiles. The measured permeability rates should not be construed to represent the actual pond exfiltration rates.

Upon evaluation of regional and local geology, we have evaluated that the characteristics of the soils within the vicinity of this project are comprised of sedimentary soils which often exhibit thin, alternating layers. Generally, in relatively homogeneous natural deposits where stratification may result from particle orientation, the Permeability in the Horizontal direction can be somewhat greater than that in the Vertical direction. Based on our experience, the estimated coefficient of Horizontal Permeability typically is on the order of 1.5 and 2.0 times greater than the Vertical Permeability for SP-SM and SP soil types, respectively.

6.0 CONSTRUCTION RELATED SERVICES

We recommend the owner retain UES to perform construction materials tests and observations on this project. Field tests and observations include verification of foundation subgrades by monitoring filling operations and performing quality assurance tests on the placement of compacted natural soils and structural fill. We can also perform concrete testing, pavement section testing, structural steel testing and other construction materials testing services.

The geotechnical engineering design does not end with the advertisement of the construction documents. The design is an on-going process throughout construction. Because of our familiarity with the site conditions and the intent of the engineering design, we are most qualified to address problems that might arise during construction in a timely and cost-effective manner.

7.0 LIMITATIONS

During the early stages of most construction projects, geotechnical issues not addressed in this report may arise. Because of the natural limitations inherent in working with the subsurface, it is not possible for a geotechnical engineer to predict and address all possible problems. An Association of Engineering Firms Practicing in the Geosciences (ASFE) publication, "Important Information about Your Geotechnical Engineering Report" appears in Appendix B, and will help explain the nature of geotechnical issues. Further, we present documents in Appendix B: Constraints and Restrictions, to bring to your attention the potential concerns and the basic limitations of a typical geotechnical report.

* * * * * * * * *

APPENDIX A

UES™



LEGEND

△ APPROXIMATE LOCATION OF AUGER BORING

⊕ APPROXIMATE LOCATION OF STANDARD PENETRATION TEST (SPT) BORING

GRAPHIC SCALE

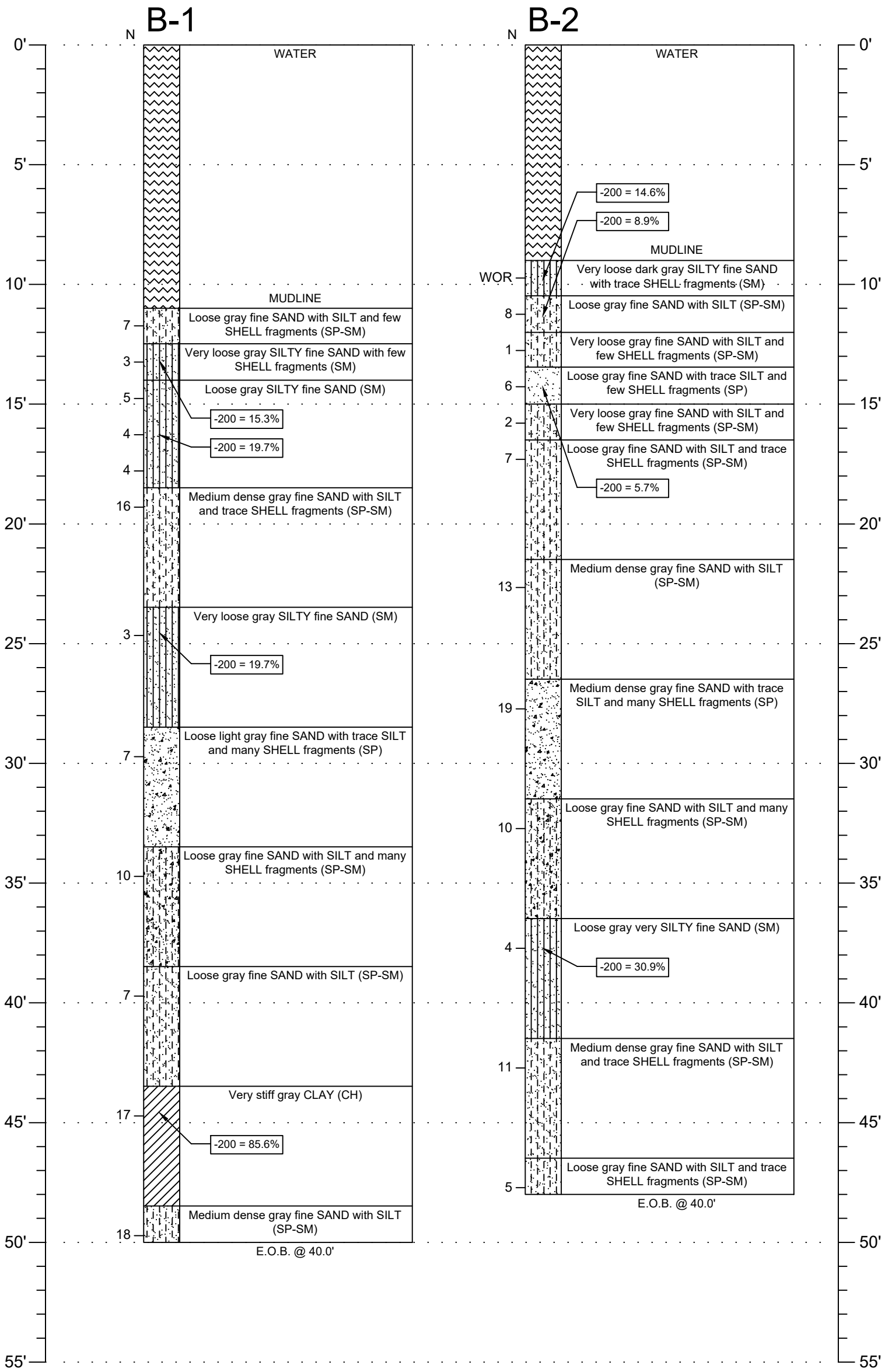
0 25 50

(IN FEET)

1 INCH ≈ 50 ft.

UES™

TITLE: BORING LOCATION PLAN			SCALE: 1" ≈ 50'
PROJECT: GEOTECHNICAL EVALUATION DUNLAWTON BOAT RAMP DOCK AND PARKING LOT PORT ORANGE, FLORIDA			PAGE/FIG. NO.: A-1
DRAWN BY: MKL	DATE: 12/06/23	PROJECT NO.: 0430.2300244.0000	
CHECKED BY: BP	DATE: 12/06/23	REPORT NO.: 2039818	



Fine SAND (SP)

Fine SAND with some to many SHELL fragments (SP)

Fine SAND with SILT (SP-SM)

SILTY fine SAND (SM)

CLAY (CH)

WATER

NOTES:

▼	Measured Groundwater Level 24 (+) Hours Subsequent to Time of Drilling
(SP)	Unified Soil Classification System
EOB	End of Boring
N	Penetr. Resistance, Blows/ft.
HA	Hand Auger Method
WOH	Weight of Hammer
Kv	Coefficient of Permeability, (ft/day)
-200	% Passing No. 200 Sieve

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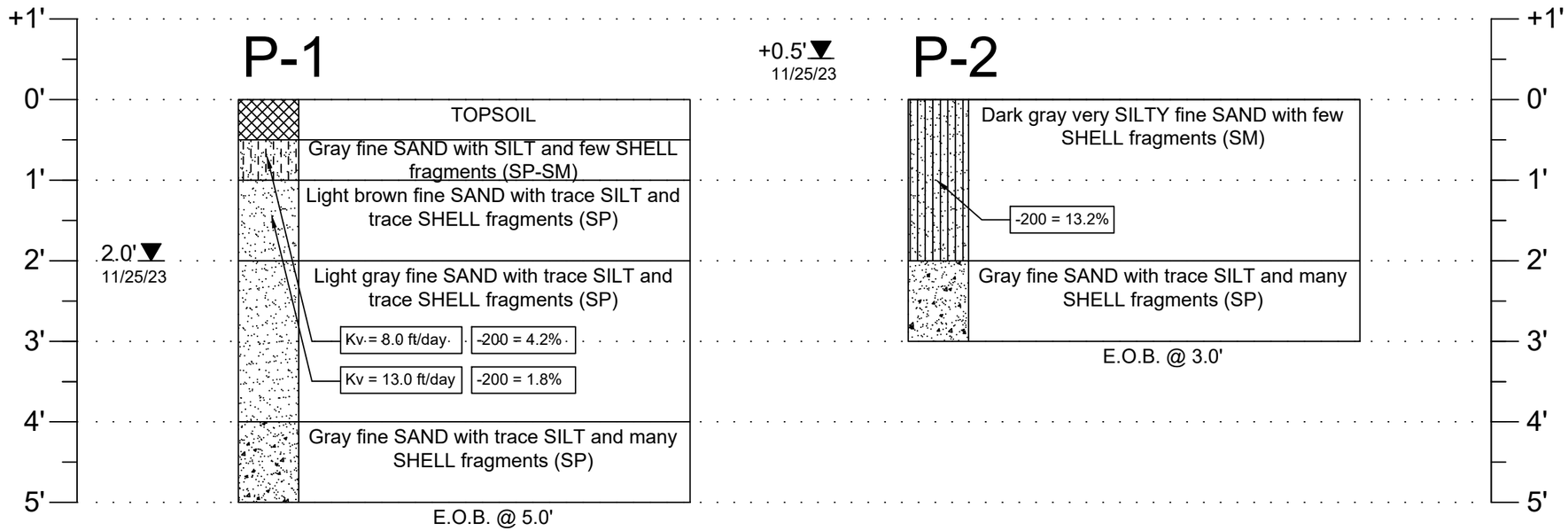
PROJECT:

GEOTECHNICAL EVALUATION
DUNLAWTON BOAT RAMP DOCK AND PARKING LOT
PORT ORANGE, FLORIDA

TITLE:

SUBSURFACE PROFILE

DRAWN BY:	MKL	DATE:	11/29/23	PROJECT NO.:	0430.2300244.0000	SCALE: NA (in feet)	PAGE/FIG. NO.: A-2
CHECKED BY:	BP	DATE:	11/29/23	REPORT NO.:	2039818		



Fine SAND (SP)

Fine SAND with some to many SHELL fragments (SP)

Fine SAND with SILT (SP-SM)

SILTY fine SAND (SM)

Topsoil (PT) ... some to many ORGANICS (PT), sometimes DEBRIS

NOTES:

▼ Measured Groundwater Level 24 (+) Hours Subsequent to Time of Drilling

(SP) Unified Soil Classification System

EOB End of Boring

NE Groundwater Not Encountered

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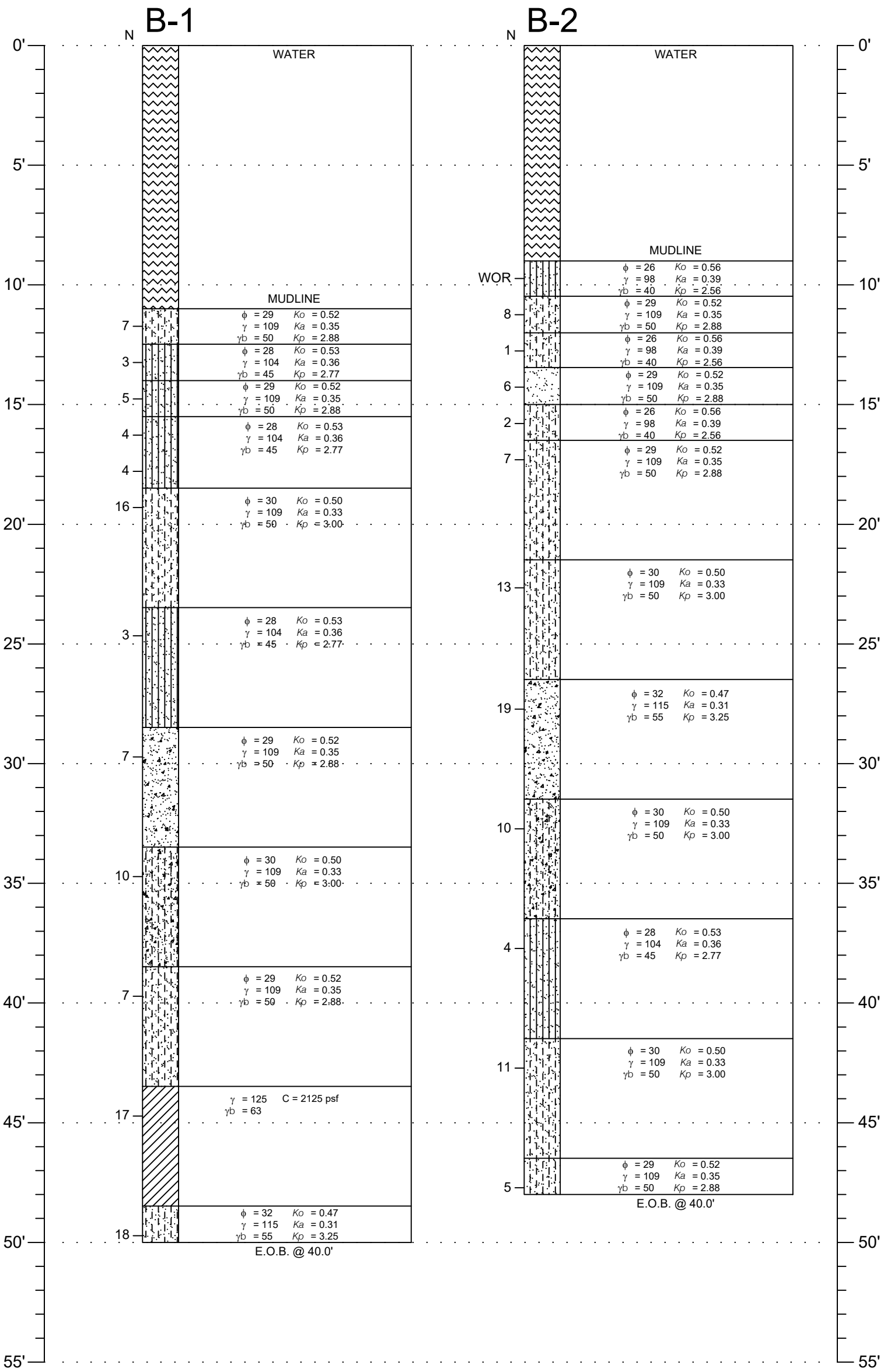
PROJECT:

GEOTECHNICAL EVALUATION
DUNLAWTON BOAT RAMP DOCK AND PARKING LOT
PORT ORANGE, FLORIDA

TITLE:

SUBSURFACE PROFILE

DRAWN BY:	MKL	DATE:	12/06/23	PROJECT NO.:	0430.2300244.0000	SCALE: NA (in feet)	PAGE/FIG. NO.: A-3
CHECKED BY:	BP	DATE:	12/06/23	REPORT NO.:	2039818		



Fine SAND (SP)

Fine SAND with some to many SHELL fragments (SP)

Fine SAND with SILT (SP-SM)

SILTY fine SAND (SM)

CLAY (CH)

WATER

ϕ = Angle of Internal Friction (degrees)
γ = Effective Unit Weight (PCF)
γb = Unit Weight Below Water Table (PCF)
Ka = Coefficient of Active Lateral Earth Pressure
Kp = Coefficient of Passive Lateral Earth Pressure
Ko = Coefficient at Rest Lateral Earth Pressure
C = Cohesion (psf)

NOTES:

▼	Measured Groundwater Level 24 (+) Hours Subsequent to Time of Drilling
(SP)	Unified Soil Classification System
EOB	End of Boring
N	Penetr. Resistance, Blows/ft.
HA	Hand Auger Method
WOH	Weight of Hammer
Kv	Coefficient of Permeability, (ft/day)
-200	% Passing No. 200 Sieve

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PROJECT:

GEOTECHNICAL EVALUATION
DUNLAWTON BOAT RAMP DOCK AND PARKING LOT
PORT ORANGE, FLORIDA

TITLE:

SOIL DESIGN PARAMETERS

DRAWN BY:	MKL	DATE:	11/29/23	PROJECT NO.:	0430.2300244.0000	SCALE: NA (in feet)	PAGE/FIG. NO.: A-4
CHECKED BY:	BP	DATE:	11/29/23	REPORT NO.:	2039818		

KEY TO BORING LOGS

SYMBOLS AND ABBREVIATIONS

SYMBOL	DESCRIPTION
N-Value	No. of Blows of a 140-lb. Weight Falling 30 Inches Required to Drive a Standard Spoon 1 Foot
WOR	Weight of Drill Rods
WOH	Weight of Drill Rods and Hammer
	Sample from Auger Cuttings
	Standard Penetration Test Sample
	Thin-wall Shelby Tube Sample (Undisturbed Sampler Used)
RQD	Rock Quality Designation
	Stabilized Groundwater Level
	Seasonal High Groundwater Level (also referred to as the W.S.W.T.)
NE	Not Encountered
GNE	Groundwater Not Encountered
BT	Boring Terminated
-200 (%)	Fines Content or % Passing No. 200 Sieve
MC (%)	Moisture Content
LL	Liquid Limit (Atterberg Limits Test)
PI	Plasticity Index (Atterberg Limits Test)
NP	Non-Plastic (Atterberg Limits Test)
K	Coefficient of Permeability
Org. Cont.	Organic Content
G.S. Elevation	Ground Surface Elevation

UNIFIED SOIL CLASSIFICATION SYSTEM

MAJOR DIVISIONS			GROUP SYMBOLS	TYPICAL NAMES
COARSE GRAINED SOILS More than 50% retained on the No. 200 sieve*	GRAVELS 50% or more of coarse fraction retained on No. 4 sieve	CLEAN GRAVELS	GW	Well-graded gravels and gravel-sand mixtures, little or no fines
			GP	Poorly graded gravels and gravel-sand mixtures, little or no fines
		GRAVELS WITH FINES	GM	Silty gravels and gravel-sand-silt mixtures
			GC	Clayey gravels and gravel-sand-clay mixtures
	SANDS More than 50% of coarse fraction passes No. 4 sieve	CLEAN SANDS 5% or less passing No. 200 sieve	SW**	Well-graded sands and gravelly sands, little or no fines
			SP**	Poorly graded sands and gravelly sands, little or no fines
		SANDS with 12% or more passing No. 200 sieve	SM**	Silty sands, sand-silt mixtures
			SC**	Clayey sands, sand-clay mixtures
FINE-GRAINED SIOLS 50% or more passes the No. 200 sieve*	SILTS AND CLAYS Liquid limit 50% or less		ML	Inorganic silts, very fine sands, rock flour, silty or clayey fine sands
			CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, lean clays
			OL	Organic silts and organic silty clays of low plasticity
	SILTS AND CLAYS Liquid limit greater than 50%		MH	Inorganic silts, micaceous or diamicaceous fine sands or silts, elastic silts
			CH	Inorganic clays or clays of high plasticity, fat clays
			OH	Organic clays of medium to high plasticity
			PT	Peat, muck and other highly organic soils

*Based on the material passing the 3-inch (75 mm) sieve
** Use dual symbol (such as SP-SM and SP-SC) for soils with more than 5% but less than 12% passing the No. 200 sieve

RELATIVE DENSITY
(Sands and Gravels)
Very loose – Less than 4 Blow/Foot
Loose – 4 to 10 Blows/Foot
Medium Dense – 11 to 30 Blows/Foot
Dense – 31 to 50 Blows/Foot
Very Dense – More than 50 Blows/Foot

CONSISTENCY
(Silts and Clays)
Very Soft – Less than 2 Blows/Foot
Soft – 2 to 4 Blows/Foot
Firm – 5 to 8 Blows/Foot
Stiff – 9 to 15 Blows/Foot
Very Stiff – 16 to 30 Blows/Foot
Hard – More than 30 Blows/Foot

RELATIVE HARDNESS
(Limestone)
Soft – 100 Blows for more than 2 Inches
Hard – 100 Blows for less than 2 Inches

MODIFIERS

These modifiers Provide Our Estimate of the Amount of Minor Constituents (Silt or Clay Size Particles) in the Soil Sample
Trace – 5% or less
With Silt or With Clay – 6% to 11%
Silty or Clayey – 12% to 30%
Very Silty or Very Clayey – 31% to 50%

These Modifiers Provide Our Estimate of the Amount of Organic Components in the Soil Sample
Trace – Less than 3%
Few – 3% to 4%
Some – 5% to 8%
Many – Greater than 8%

These Modifiers Provide Our Estimate of the Amount of Other Components (Shell, Gravel, Etc.) in the Soil Sample
Trace – 5% or less
Few – 6% to 12%
Some – 13% to 30%
Many – 31% to 50%

APPENDIX B

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Important Information about This

Geotechnical-Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical-engineering study conducted for a civil engineer may not fulfill the needs of a constructor — a construction contractor — or even another civil engineer. Because each geotechnical- engineering study is unique, each geotechnical-engineering report is unique, prepared *solely* for the client. No one except you should rely on this geotechnical-engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you* — should apply this report for any purpose or project except the one originally contemplated.

Read the Full Report

Serious problems have occurred because those relying on a geotechnical-engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

Geotechnical Engineers Base Each Report on a Unique Set of Project-Specific Factors

Geotechnical engineers consider many unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk-management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical-engineering report that was:

- not prepared for you;
- not prepared for your project;
- not prepared for the specific site explored; or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical-engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light-industrial plant to a refrigerated warehouse;
- the elevation, configuration, location, orientation, or weight of the proposed structure;
- the composition of the design team; or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical-engineering report is based on conditions that existed at the time the geotechnical engineer performed the study. *Do not rely on a geotechnical-engineering report whose adequacy may have been affected by*: the passage of time; man-made events, such as construction on or adjacent to the site; or natural events, such as floods, droughts, earthquakes, or groundwater fluctuations. *Contact the geotechnical engineer before applying this report to determine if it is still reliable.* A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ — sometimes significantly — from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide geotechnical-construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are Not Final

Do not overrely on the confirmation-dependent recommendations included in your report. *Confirmation-dependent recommendations are not final,* because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations *only* by observing actual subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's confirmation-dependent recommendations if that engineer does not perform the geotechnical-construction observation required to confirm the recommendations' applicability.*

A Geotechnical-Engineering Report Is Subject to Misinterpretation

Other design-team members' misinterpretation of geotechnical-engineering reports has resulted in costly

problems. Confront that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Constructors can also misinterpret a geotechnical-engineering report. Confront that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing geotechnical construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical-engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Constructors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make constructors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give constructors the complete geotechnical-engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise constructors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure constructors have sufficient time* to perform additional study. Only then might you be in a position to give constructors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and constructors fail to recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Environmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform an *environmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical-engineering report does not usually relate any environmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own environmental information, ask your geotechnical consultant for risk-management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold-prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, many mold- prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical- engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold prevention consultant; *none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.*

Rely, on Your GBC-Member Geotechnical Engineer for Additional Assistance

Membership in the Geotechnical Business Council of the Geoprofessional Business Association exposes geotechnical engineers to a wide array of risk-confrontation techniques that can be of genuine benefit for everyone involved with a construction project. Confer with you GBC-Member geotechnical engineer for more information.

GEOTECHNICAL BUSINESS COUNCIL
of the Geoprofessional Business Association

8811 Colesville Road/Suite G106, Silver Spring, MD 20910
Telephone: 301/565-2733 Facsimile: 301/589-2017
e-mail: info@geoprofessional.org www.geoprofessional.org

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CONSTRAINTS & RESTRICTIONS

The intent of this document is to bring to your attention the potential concerns and the basic limitations of a typical geotechnical report.

WARRANTY

Universal Engineering Sciences has prepared this report for our client for his exclusive use, in accordance with generally accepted soil and foundation engineering practices, and makes no other warranty either expressed or implied as to the professional advice provided in the report.

UNANTICIPATED SOIL CONDITIONS

The analysis and recommendations submitted in this report are based upon the data obtained from soil borings performed at the locations indicated on the Boring Location Plan. This report does not reflect any variations which may occur between these borings.

The nature and extent of variations between borings may not become known until excavation begins. If variations appear, we may have to re-evaluate our recommendations after performing on-site observations and noting the characteristics of any variations.

CHANGED CONDITIONS

We recommend that the specifications for the project require that the contractor immediately notify Universal Engineering Sciences, as well as the owner, when subsurface conditions are encountered that are different from those present in this report.

No claim by the contractor for any conditions differing from those anticipated in the plans, specifications, and those found in this report, should be allowed unless the contractor notifies the owner and Universal Engineering Sciences of such changed conditions. Further, we recommend that all foundation work and site improvements be observed by a representative of Universal Engineering Sciences to monitor field conditions and changes, to verify design assumptions and to evaluate and recommend any appropriate modifications to this report.

MISINTERPRETATION OF SOIL ENGINEERING REPORT

Universal Engineering Sciences is responsible for the conclusions and opinions contained within this report based upon the data relating only to the specific project and location discussed herein. If the conclusions or recommendations based upon the data presented are made by others, those conclusions or recommendations are not the responsibility of Universal Engineering Sciences.

CHANGED STRUCTURE OR LOCATION

This report was prepared in order to aid in the evaluation of this project and to assist the architect or engineer in the design of this project. If any changes in the design or location of the structure as outlined in this report are planned, or if any structures are included or added that are not discussed in the report, the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed and the conclusions modified or approved by Universal Engineering Sciences.

USE OF REPORT BY BIDDERS

Bidders who are examining the report prior to submission of a bid are cautioned that this report was prepared as an aid to the designers of the project and it may affect actual construction operations.

Bidders are urged to make their own soil borings, test pits, test caissons or other investigations to determine those conditions that may affect construction operations. Universal Engineering Sciences cannot be responsible for any interpretations made from this report or the attached boring logs with regard to their adequacy in reflecting subsurface conditions which will affect construction operations.

STRATA CHANGES

Strata changes are indicated by a definite line on the boring logs which accompany this report. However, the actual change in the ground may be more gradual. Where changes occur between soil samples, the location of the change must necessarily be estimated using all available information and may not be shown at the exact depth.

OBSERVATIONS DURING DRILLING

Attempts are made to detect and/or identify occurrences during drilling and sampling, such as: water level, boulders, zones of lost circulation, relative ease or resistance to drilling progress, unusual sample recovery, variation of driving resistance, obstructions, etc.; however, lack of mention does not preclude their presence.

WATER LEVELS

Water level readings have been made in the drill holes during drilling and they indicate normally occurring conditions. Water levels may not have been stabilized at the last reading. This data has been reviewed and interpretations made in this report. However, it must be noted that fluctuations in the level of the groundwater may occur due to variations in rainfall, temperature, tides, and other factors not evident at the time measurements were made and reported. Since the probability of such variations is anticipated, design drawings and specifications should accommodate such possibilities and construction planning should be based upon such assumptions of variations.

LOCATION OF BURIED OBJECTS

All users of this report are cautioned that there was no requirement for Universal Engineering Sciences to attempt to locate any man-made buried objects during the course of this exploration and that no attempt was made by Universal Engineering Sciences to locate any such buried objects. Universal Engineering Sciences cannot be responsible for any buried man-made objects which are subsequently encountered during construction that are not discussed within the text of this report.

TIME

This report reflects the soil conditions at the time of exploration. If the report is not used in a reasonable amount of time, significant changes to the site may occur and additional reviews may be required.

UES

NOTICE OF INTENT TO AWARD

ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

May 13, 2025

On April 29, 2025, the City of Port Orange received four (4) bid submittals for **ITB #25-12 Causeway Boat Ramp and Park Improvements.**

After reviewing the bids received, City Staff has made a recommendation to award to:

East Coast Marine Construction & Design

Respectfully Submitted,

Joseph Castro
Buyer

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on May 16, 2025 at 11:00AM EST.

ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS
BID TABULATION

				EAST COAST MARINE CONSTRUCTION & DESIGN		RUSH MARINE, LLC		RJ GORMAN MARINE CONSTRUCTION		NON-RESPONSIVE BROTHERS' CONSTRUCTION, INC.	
ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization (Including Dewatering)	LS	1		$ 128,887.00		$ 413,441.00		$ 398,487.84		$ -
2	Construction and As-Built Survey	LS	1		$ 22,149.00		$ 9,757.00		$ 28,192.08		$ -
3	Vibration Monitoring	LS	1		$ 16,690.00		$ 53,136.00		$ 20,083.50		$ -
4	Environmental Compliance (Including Turbitidity Control)	LS	1		$ 26,051.00		$ 24,502.00		$ 30,632.92		$ -
5	Demolition, Hauling, and Disposal	LS	1		$ 138,037.00		$ 160,762.00		$ 282,577.62		$ -
6	Aluminum Gangway (30' x 5')	EA	4	$ 21,648.00	$ 86,592.00	$ 16,785.00	$ 67,140.00	$ 22,304.91	$ 89,219.64	$ -	$ -
7	Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles)	SF	960	$ 237.69	$ 228,182.40	$ 235.00	$ 225,600.00	$ 256.11	$ 245,865.60	$ -	$ -
8	Fixed Concrete Access Dock	EA	3	$ 48,321.00	$ 144,963.00	$ 36,693.00	$ 110,079.00	$ 22,354.54	$ 67,063.62	$ -	$ -
9	Timber Access Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade)	SF	320	$ 240.39	$ 76,924.80	$ 217.00	$ 69,440.00	$ 146.93	$ 47,017.60	$ -	$ -
10	CMI UC-50 Composite Sheet Pile or Approved Equivalent	LF	242	$ 703.77	$ 170,312.34	$ 591.00	$ 143,022.00	$ 491.94	$ 119,049.48	$ -	$ -
11	Concrete Boat Ramp	SF	6,560	$ 69.62	$ 456,707.20	$ 51.30	$ 336,528.00	$ 17.81	$ 116,833.60	$ -	$ -
12	FDOT Aluminum Railing - Type 1 Picket Infill Panel	LF	232	$ 75.46	$ 17,506.72	$ 122.00	$ 28,304.00	$ 415.97	$ 96,505.04	$ -	$ -
13	Milling (8-Inch Depth)	SY	2,178	$ 5.80	$ 12,632.40	$ 22.10	$ 48,133.80	$ 29.40	$ 64,033.20	$ -	$ -
14	2-Inch Type S-1, S-2, or Superpave, 12.5 mm	TN	240	$ 218.46	$ 52,430.40	$ 159.00	$ 38,160.00	$ 210.84	$ 50,601.60	$ -	$ -
15	6-Inch Limerock Base Course	SY	2,178	$ 18.23	$ 39,704.94	$ 24.58	$ 53,535.24	$ 68.15	$ 148,430.70	$ -	$ -
16	Pavement Marking and ADA Signs	LS	1		$ 6,732.27		$ 5,775.00		$ 2,384.91		$ -
17	Concrete Bumper Guards	EA	22	$ 250.27	$ 5,505.94	$ 214.00	$ 4,708.00	$ 108.40	$ 2,384.80	$ -	$ -
18	Bollards	EA	4	$ 940.43	$ 3,761.72	$ 1,042.00	$ 4,168.00	$ 596.22	$ 2,384.88	$ -	$ -
19	Environmental Signs and Information Kiosk	LS	1		$ 5,470.62		$ 3,780.00		$ 2,384.91		$ -
20	Concrete Flush Curb	LF	60	$ 190.92	$ 11,455.20	$ 153.00	$ 9,180.00	$ 129.77	$ 7,786.20	$ -	$ -
				TOTAL PRICE:	$ 1,650,695.95	TOTAL PRICE:	$ 1,809,151.04	TOTAL PRICE:	$ 1,821,919.74	TOTAL PRICE:	$ -

LEGEND
EA - EACH
LF - LINEAR FEET
LS - LUMP SUM
SF - SQUARE FEET
SY - SQUARE YARD
TN - TON

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID
ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

City of Port Orange Purchasing Division
Prepared by: Joseph Castro
Release Date: March 28, 2025

Bid Due Date & Time: April 29, 2025 @2:30 PM

City of Port Orange, Florida
1000 City Center Circle, Port Orange, FL 32129
(386) 506-5717
purchdiv@port-orange.org; www.port-orange.org

Legal Notice to Bidders

ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #25-12 Causeway Boat Ramp and Park Improvements. Bids will be accepted in the City Clerk's office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on April 29, 2025** which may be amended by addendum issued by the City. All untimely bids will not be considered and will be returned to the Bidder unopened. All bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. **Bids will be opened and read aloud at 2:30 PM EST in Council Chambers.**

There will be a mandatory Pre-Bid Conference and site visit for the project at **10:00 AM EST** on **April 4, 2025** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All prospective Bidders must attend the meeting and site visit. **Only Bidders attending the mandatory Pre-Bid Conference and site visit will be eligible to submit a Bid.** All attendees to the Pre-Bid Conference and site visit must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and MUST sign in accordingly. Bidders are urged to obtain bid documents and familiarize themselves with the documents prior to the Pre-Bid Conference.

DESCRIPTION: *Demolition and construction of new boat ramp, installation of aluminum gangway, floating concrete dock system and aluminum pedestrian railing installation, accessory docks and timber pier construction and various parking lot improvements.*

Funding for this project includes grant monies from CDBG (Community Development Block Grant), F.I.N.D. (Florida Inland Navigation District), Volusia County ECHO (Environmental, Cultural, Historical, and Outdoor Recreation) and other City funding sources. The CDBG grant monies are subject to Federal Guidelines that include the Build America, Buy America Act (BABAA) and 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.

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

Bidder must include with their submittal a bid guarantee in the form of a bid bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid. If awarded, the Bidder must also be able to obtain both payment and performance bonds equal to one hundred percent (100%) of the project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's failure to include the bonding capacity letter with bid package may result in rejection of Bidder's submittal.

All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with Chapter 2, Article VI, Division 2, Section 2-266. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 and at www.municode.com.

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

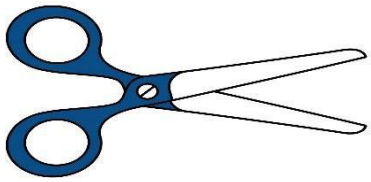
All questions shall be directed **in writing** to Joseph Castro jcastro@port-orange.org and purchdiv@port-orange.org and reference "Questions on ITB #25-12 Causeway Boat Ramp and Park Improvements" in the subject line. Last day for questions will be **April 11, 2025 by 5:00 PM EST.**

The Cone of Silence begins with the issuance of the solicitation document and continues until City Council meets to make a final decision on an award. During this time Bidders, suppliers, contractors and sub-contractors are

prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials. Any Bidder who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential Bidders, suppliers, contractors and sub-contractors must be directed to the Purchasing Division @ purchdiv@port-orange.org.

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

[Remainder of page left intentionally blank]



SEALED BID – DO NOT OPEN

SEALED BID NO.: **ITB #25-12**

BID TITLE: **CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS**

DUE DATE/TIME: **April 29, 2025 AT 2:30 PM EST**

SUBMITTED BY: _____
(Name of Company)

BIDDER'S ADDRESS: _____

_____

DELIVER TO: **CITY OF PORT ORANGE CITY CLERK'S OFFICE**
ATTN: JOSEPH CASTRO, BUYER
PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

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

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Bidders) for the Causeway Boat Ramp and Park Improvements. The awarded Bidder is required to provide all the necessary labor, services, supplies, equipment, tools, consumables, transportation, skills, and incidentals to demolish and construct a new boat ramp, put in place an aluminum gangway, install a floating concrete dock system and aluminum pedestrian railing, build accessory docks and a timber pier and complete various park lot improvements.

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

SECTION 2 – INSTRUCTIONS TO BIDDERS

Bidders desiring to provide services, as described herein shall submit sealed bids, including one (1) original and one (1) digital (flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Eastern Standard Time)

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of distribution	March 28, 2025
Mandatory Pre-Bid Conference and site visit	April 4, 2025 @10:00AM
Deadline for questions	April 11, 2025 by 5:00 PM
Addendum posting (if needed)	April 18, 2025
Bids due	April 29, 2025 by 2:30 PM
City Council meeting for approval of Recommendation of Award	To Be Determined

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

City of Port Orange City Clerk's Office
Attn: Joseph Castro, Buyer
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Sealed bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time. Bids shall be sealed and Bidders shall clearly indicate on the outside of their bid the following:

a. Invitation to Bid (ITB) Number and Title
b. Date of Opening
c. Name of Bidder
d. Address of Bidder

Due to the timing of mail service, the City cautions Bidders to ensure actual delivery of bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Bidders are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. The City will not be responsible for deliveries made to any place other than the specified address.

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

All bids will be opened publicly and the names of all Bidders shall be read aloud. All conferences and meetings regarding this ITB are recorded electronically (audio only). The City of Port Orange reserves the right to reject any or all bids or parts of bids if it is in the best interest of the City.

PRE-BID CONFERENCE

There will be a mandatory Pre-Bid Conference and site visit on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All prospective Bidders must attend the meeting and site visit. **Only Bidders attending the mandatory Pre-Bid Conference and site visit will be eligible to submit a bid.** All attendees to the mandatory Pre-Bid Conference and site visit MUST sign in. The representative of each Bidder shall be an authorized employee of the Bidder and must sign in accordingly. The site visit will immediately follow the meeting in Council Chambers.

QUESTIONS

All questions shall reference ''ITB #25-12 Causeway Boat Ramp and Park Improvements" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Joseph Castro, Buyer
1000 City Center Circle
Port Orange, FL 32129
jcastro@port-orange.org
purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the bid due date. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. The Bidder should verify prior to submitting a bid that all addenda have been received and reviewed. All addenda will be published on the City Purchasing web page at www.port-orange.org/bids.aspx and the DemandStar website at www.demandstar.com.

The City of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Bidder or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Bidder or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS

It is the Bidder's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS

Bidders shall be a certified General Contractor. Bidders shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active".

Bidders must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this ITB on the provided *Professional References* form (Form 7.8). Failure to provide verifiable references may cause the Bidder to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING

All Bidders are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all Bidders and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted bids for this project. Any Bidder contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

SCHEDULE OF UNIT PRICING

Schedule of Unit Pricing is to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the Schedule of Unit Pricing as directed and without modification will negatively affect the evaluation of your bid. If the City has a need to revise the Schedule of Unit Pricing prior to the bid submittal deadline, it will do so in a published addendum. If the City does revise the Schedule of Unit Pricing, bidders **must** complete and return the City issued revised version of the Schedule of

Unit Pricing. If bidder does NOT complete and return the City issued revised version of the Schedule of Unit Pricing their bid submittal will be deemed non-responsive.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the ITB specifications, the Bidder must indicate those exceptions as stated on the *Bidder's Acknowledgement* (Form 7.2).

BID SUBMISSION AND WITHDRAWAL

Unless otherwise specified, Bidder shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Bidders. Upon opening, bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS

Correction of inadvertently erroneous bids shall be permitted up to the time of ITB opening. Bidders shall not be allowed to modify their bids after the opening time and date.

WITHDRAWAL OF BIDS

NO bid shall be withdrawn for a period of one-hundred-twenty (120) days subsequent to the bid opening without the consent of the City of Port Orange. Negligence on the part of the Bidder's firm in preparing their bid confers no right of withdrawal or modification after the bid has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn bid shall not be resubmitted.

OPENING OF BIDS

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. The City bears no responsibility for the premature opening of a bid not properly addressed and identified.

LITIGATION HISTORY

The City will consider a Bidder's litigation history information in its review and determination of responsibility. All Bidders are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Bidder, any parent or subsidiary of the Bidder, or any predecessor organization. If the Bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Bidder's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non- responsive by the Purchasing Manager.

DEBARMENT HISTORY

The City will consider a Bidder's debarment history information in its review and determination of responsibility. All Bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Bidder, any parent or subsidiary of the Bidder, or any predecessor organization. If the Bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Bidder's debarment history is an issue of responsibility, the failure to provide debarment history as required on the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS

The City reserves the right to reject any and/or all bids when such rejection is in the best interest of the City.

BIDS MAY BE REJECTED AND/OR BIDDER(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

(a) Failure to update the information on file including address, product, service or business descriptions.
(b) Failure to perform according to contract provisions.
(c) Conviction in a court of law of any criminal offense in connection with the conducting of business.

(d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.
(e) Evidence that the Bidder has attempted to give a City employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City's purchasing activity.
(f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS

All documents resulting from this solicitation will become the sole property of the City of Port Orange. The Bidder must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Bidder upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA)

If you need special services provided under the Americans with Disabilities Act, contact the ADA Coordinator in our Human Resources office at 386-506-5560 at least 48 hours before the scheduled event.

REQUIRED DOCUMENTS FOR AWARDED BIDDER

The awarded Bidder shall return all the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract.

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF WORK

This project involves the complete removal of the existing concrete boat ramp, four timber access dock structures, four aluminum gangways, four floating dock systems, and the corresponding piles supporting the floating dock systems. The scope of work also includes the supply and installation of a new reinforced concrete boat ramp, three fixed reinforced concrete access docks, one timber access dock, four aluminum gangways, and four concrete floating dock systems, along with the necessary concrete piles for the floating dock systems. Additionally, the project includes milling and paving the existing asphalt road and parking area, as well as installing twenty-two bumper guards (wheel stops), four bollards, pavement markings, and an environmental informational kiosk with environmental signs and a monofilament bin, as specified in the construction plans and technical specifications provided in the bid package.

The project site is located within the Florida Intracoastal Waterway (ICW), and all work related to erosion and turbidity monitoring and control, in compliance with state and federal regulations, is part of the project scope. Furthermore, as the project is situated under the Dunlawton Avenue Causeway Bridge, vibration monitoring, as outlined in the construction plans and technical specifications, is mandatory.

Please refer to Attachment No.2 Project Technical Specifications, Attachment No.3 Construction Drawings, and Attachment No.4 Geotechnical Evaluation documents on the City's webpage @www.port-orange.org/bids.aspx and DemandStar @www.demandstar.com .

[Remainder of this page left intentionally blank]

SECTION 4 – STANDARD PURCHASE DEFINITIONS

The City will use the following definitions in instructions to Bidders, terms and conditions, special provisions, technical specifications and any other solicitation documents.

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget fora fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerers who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Bidders/Proposers in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective Bidders requesting pricing for a specified Good or Service which has been advertised for bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective proposers requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.

26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
27. **Lowest Responsible Bid** means the responsive bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting lowest responsible bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employ mentor practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective proposers requesting qualifications of the proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective proposers requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.

46. **Responsible (Bidder)** is a Bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Bidder)** is a Bidder that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Bidder must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective Bidders/Proposers to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a supplier, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder/Proposer's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

SECTION 5 – GENERAL TERMS AND CONDITIONS

These terms and conditions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. These General Terms and Conditions apply to all advertised Solicitations; however, said terms and conditions may be superseded, in whole or in part, by Section 6, Special Requirements/Instructions.

1. **ACCEPTANCE BY CITY**

   The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by the Bidder. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this solicitation shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

2. **ADDENDA**

   When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders must acknowledge all addenda by completing Form 7.3 *Addendum and Change Order Procedure Acknowledgement* and include it in the returned response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the response. It is the responsibility of the Bidder to ensure all addenda have been received and reviewed prior to submitting a bid. All addenda shall be posted by the City on DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at https://www.port-orange.org/bids.aspx. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the solicitation response due date. Bidders should not rely on any representations, statements or explanations other than those made in this solicitation or in any addendum to the solicitation. Where there appears to be a conflict between the solicitation and any addenda issued, the last addendum issued shall prevail.

3. **ADDITIONAL GOODS**

   Products, materials and goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

   By submitting a response to a formal solicitation, the Bidder affirms that this response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a response for the same materials, supplies, or equipment, and that the response is in all respects fair, and without collusion or fraud. Additionally, Bidder agrees to abide by all conditions of this solicitation and certifies that he/she is authorized to sign the response for the bidding company/firm. In submitting a response to the City of Port Orange, the Bidder offers and agrees that if the response is accepted, the Bidder shall convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Bidder.

5. **APPLICABLE LAWS**

   In connection with the furnishing of supplies or performance of work under the contract, the Bidder agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other

applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

The successful Bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release the Bidder from all contractual obligations.

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA**

A Florida corporation or partnership is required to provide evidence with its response that it is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that it is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A joint venture is required to provide evidence with its response that it, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

8. **AWARDS**

Recommendation for award will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Manual. The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Bidders; to reject any and all bids, or to waive any informality or technicality in bids received as deemed to be in the best interest of the City. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, bid or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT**

When a bid received has been determined to be satisfactory, a contract will be awarded, or Purchase Order issued to the lowest responsive and responsible Bidder within the time designated in the contract documents. The Bidder(s) to whom the award is made shall execute the contract(s) and return it, together with the properly executed bonds and insurance certificates to the City within the time specified.

10. **BID RETURNS**

Bidders shall return all completed responses to the City of Port Orange at the address set forth in Section 2 of this document on the date and at the time specified. Late submissions will not be accepted and shall be returned to Bidders unopened.

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, statements, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest

or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

a. As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to City Manager, City Attorney, Department Head involved, and Supervisor directly involved in the acquisition.
b. Purchasing Manager shall schedule within seven (7) business days, excluding weekends and holidays, a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before Council. After reviewing all relevant information, the City Manager shall render a decision.
c. If the protestor disagrees, he/she may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council will issue their decision. The City Council's decision is final; however, the protestor can appeal the decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the City Council's final decision. Decisions at all levels shall be in writing to the protester.

12. **BID TABULATION**

Bidders who wish to receive a copy of the bid tabulation may obtain it via DemandStar at www.demandstar.com or on the City Purchasing web page at www.port-orange.org/bids.aspx.

13. **BIDDER'S PRODUCT OR SERVICES**

The Bidder's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the Bidder warrants that it has a clear title to the product being delivered.

a. If the Bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
b. The Bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder.
c. In furnishing the service or product to the City, the Bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, proposal or quote.

14. **BONDS**

If this solicitation requires submission of bid guarantee and payment and performance bonds, there will be a separate section explaining those requirements. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount.

Depending on the amount and/or nature of the work to be performed, a Payment and Performance Bond may be requested and shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the awarded Bidder's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the awarded Bidder the recording information for the bond to evidence that the Bidder has met the requirements of Florida law. The City will bill the cost of recording to the awarded Bidder. Unsuccessful respondents are entitled to the return of their bid bond. A successful respondent shall forfeit any surety required by the Purchasing Manager upon failure of the respondent to enter into a contract within the time specified after the award of bid.

15. **CERTIFICATE OF INSURANCE**

Upon issuance of a notice of intent to award, the selected Bidder will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions

and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as Additional Insured prior to execution of the contract.

16. **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the supplier/contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Bidder receives an executed Purchase Order for the requested change.

17. **CHANGE ORDER REQUEST NOTIFICATION**

The awarded Bidder is responsible for giving the City of Port Orange, prior to the contract expiration date, at least forty-five (45) calendar days of advance notice for any anticipated changes in price greater than $25,000, and any changes in time and/or scope of the awarded contract. The Bidder shall not continue to provide services past the contract expiration date unless approved by a written Change Order Notice from the City.

18. **CLEAN UP**

Upon completion of the delivery of materials, the Bidder shall restore any/all public and private property which may have been damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Bidder shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged. If sod is used it shall match the sod present on the effected property. Bidder shall make all repairs and restorations at his/her expense.

19. **CONDUCT OF BIDDERS**

All Bidders or individuals acting on behalf of a Bidder are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Evaluation Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written staff recommendation (Notice of Intent to Award) for selection of a Bidder. All Bidders or individuals acting on behalf of a Bidder are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Bidder. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Division. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members or the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

20. **CONE OF SILENCE**

The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award. The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time Bidders, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any Bidder who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly noticed committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

21. **CONFLICT OF INTEREST**

For purposes of determining any possible conflict of interest, all Bidders must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of Bidder's business. No official or

employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed contract.

22. **CONFLICT OF INSTRUCTIONS**

If a conflict exists between the General Terms and Conditions and instructions contained herein, and the Special Terms and Conditions and instructions contained herein, the Special Terms and Conditions shall govern.

23. **CONTRACT OBLIGATION**

Except as otherwise stated herein, the City of Port Orange City Council shall approve the contract if greater than $25,000.00 annually. The Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the City of Port Orange or the Bidder. Department heads are NOT authorized to sign contracts for the City of Port Orange. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

24. **CONTRACT RENEWALS**

Renewals may be made ONLY by written agreement between the City of Port Orange and the Bidder. Any price escalations are limited to those stated by the Bidder on the original response.

25. **COPYRIGHT AND PATENT RIGHTS**

Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this response, and successful Bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

26. **COST INCURRED BY BIDDER**

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Bidder. No payment shall be made for any response received, nor for any other effort required of or made by the Bidder prior to commencement of work as defined by the contract approved by the City Council.

27. **DAMAGE**

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the City's representative and the Bidder. If the Bidder is found to be at fault, all repairs, restitution, or reimbursements to the City must be completed within one week of discovery.

28. **DEBARMENT HISTORY**

The City will consider a Bidder's debarment history information in its review and determination of responsibility. All Bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Bidder, any parent or subsidiary of the Bidder, or any predecessor organization. If the Bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Bidder's debarment history is an issue of responsibility, the failure to provide debarment history as required on the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.

29. **DEFAULT PROVISIONS**

In the event of default by the Bidder, the City reserves the right to procure the item(s) bid from other sources and hold the Bidder responsible for excess costs incurred as a result. If a Bidder defaults on a City contract, the City Council may elect to refrain from doing business with the Bidder for a period of 36 months from the date of default.

30. **DELIVERY OF GOODS/SERVICES**

All materials are to be delivered F.O.B.; City of Port Orange designated facility. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The Bidder shall clearly state in the response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the

time(s) specified herein and hold the Bidder in default. Upon approval of a contract, the Bidder is obligated to deliver the goods to the destination specified in the solicitation or the purchase order and bears the risk of loss until delivery. If this solicitation or purchase order does not contain delivery instructions, Bidder shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this competitive solicitation shall prevail. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the Bidder, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the Bidder to meet the contract delivery dates will be cause for removal of the Bidder from the City's list of eligible Bidders/Proposers as determined by the Purchasing Division.

31. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER**

In determining the lowest and best responsible Bidder, in addition to price, there will be considered the following:

a. The ability, capacity and skill of the Bidder to perform the contract.
b. Whether the Bidder can perform the contract within the time specified, without delay or interference.
c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder.
d. The quality of performance of previous contracts.
e. The previous and existing compliance by the Bidder with laws and ordinances relating to the contract.
f. The sufficiency of the financial resources and ability of the Bidder to perform the contract or provide the service.
g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
h. The ability of the Bidder to provide further maintenance and service for the use of the subject of the contract.
i. The number and scope of conditions attached to the bid.
j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

32. **DISCLOSURE OF CONFLICTS**

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Bidders must disclose with their response the name of any officer, director, or agent who is also an employee of the City. Further, all Bidders must disclose the name of any employee who owns, directly or indirectly, an interest in the Bidder's firm or any of its branches. The Bidder shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the Bidder. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The Bidder shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the solicitation.

33. **DISQUALIFICATION OF BIDDER**

The Purchasing Manager shall maintain a current listing of qualified Bidders. The Purchasing Manager may, from time to time, remove any Bidder's name from the list of qualified Bidders. Normally the removal of a Bidder from the Bidder list is done after non-response from that Bidder for three (3) consecutive solicitations. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all responses may be rejected if the City believes that collusion exists among the Bidders. Responses in which the prices are obviously unbalanced may be rejected. If multiple responses are submitted by a Bidder and after the responses are opened one of the responses is withdrawn, the result will be that all of the responses submitted by that Bidder will be withdrawn; however, nothing herein prohibits a Bidder from submitting multiple responses for different products or services.

34. **EVALUATION**

Evaluation shall be used as a determinant as to which response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All responses are subject to tabulation by the City of

Port Orange Purchasing Division and recommendation to the governing body. Compliance with all solicitation requirements, delivery and needs of the using department are considerations in evaluating responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any Bidder/Proposer, at any time, to clarify, verify or request information with regard to any response.

35. **EXCEPTIONS TO SPECIFICATIONS**

For purposes of evaluation, the Bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Bidder that are required to be signed by the City. If exceptions are not stated by the Bidder, in his/her bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder on Form 7.2 *Bidder's Acknowledgement* included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

36. **E-VERIFY**

Bidders shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Bidder during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Bidders shall complete Form 7.11 *E-Verify Affidavit* and include it in the returned bid package. Failure to include the affidavit may result in rejection of the bid.

37. **FACILITIES**

The City reserves the right to inspect the Bidder's facilities at any time.

38. **FAILURE TO RESPOND**

If the Bidder elects not to bid, the City requests that Bidder return the enclosed Form 7.15 *No Bid Response* by the bid due date and state the reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting Form 7.15 *No Bid Response*, three (3) times, shall result in the Bidder's name being removed from the City's mailing list.

39. **FINANCIAL STABILITY**

Bidders shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement **and** the latest Dunn & Bradstreet report will be accepted in lieu thereof.

40. **FORCE MAJEURE**

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of force majeure. Force majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

41. **FOREIGN COUNTRIES OF CONCERN**

A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

42. **GOVERNING FORMS**

In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.

43. **GOVERNING LAW**

Bidders shall comply with all applicable federal, state and local laws and regulations. All responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all responses will be evaluated in accordance with the provisions thereof.

Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than $35,000.00 must have a signed, notarized *Sworn Statement of Public Entity Crimes* (Form 7.5) contained herein to comply with Section 287.133(3)(a), Florida Statutes. Also required is the *Drug- Free Preference Statement* (Form 7.4) also contained herein to comply with Section 287.087, Florida Statutes.

44. **GRANT FUNDING**

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the Bidder understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

45. **HIPAA COMPLIANCE**

The Bidder agrees to comply with the Standards for Privacy of Individually Identifiable Health Information of the Health Insurance Portability and Accountability Act of 1996, PL 104-191, 45 CFR Parts 160-164, as amended, referred to as "HIPAA," to the extent that the Bidder uses, discloses or has access to protected health information as defined by HIPAA.

46. **IDENTICAL TIE BIDS**

If there are tie bids, meaning everything except the information relating to the submitting firm is the same, the following methods shall be used in the order below to break the tie:

- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie Bidder who has or had a contract with the City and performance is or was not satisfactory, the other tied Bidder is awarded.
- Drug free workplace policy in place.
- If both tied firms have had contracts with the City and performance is or was satisfactory, and if both firms have a drug free workplace policy, then a coin toss shall be used to break the tie.

47. **INDEMNIFICATION/HOLD HARMLESS**

(a) Bidder shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Bidder, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the contract by the Bidder, his/its agents, servants and employees. Bidder shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify the City when there is any causal connection between Bidder's work and any injury, loss, damage, death or property damage, Bidder expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Bidder hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Bidder as long as the claims made could be causally connected to Bidder as reasonable determined by the City.

48. **INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Bidder as an independent contractor. The parties hereto understand and agree that the City shall not be

liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Bidder under this contract and that the successful Bidder has no authority to bind the City. The Bidder represents itself to be an independent contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Bidder shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Bidder shall further understand that the City cannot save and hold harmless and or indemnify the Bidder and/or the Bidder's employees against any liability incurred or arising as a result of any activity of the Bidder or any activity of the Bidder's employees performed in connection with the contract.

49. **INSPECTIONS AND TESTING**

City of Port Orange reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a Bidder cannot furnish a sample of a response item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the response as inadequate and non-responsive.

50. **INSURANCE CANCELLATION**

No change or cancellation in insurance shall be made without thirty (30) days of written notice by the Bidder to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the contract breached which shall justify the termination thereof.

51. **INSURANCE REQUIREMENTS**

Bidder shall maintain insurance, as required herein, during the life of this contract. Bidder shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Bidder shall be primary and non- contributory. All insurance coverages of the Bidder shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Bidder may use leased employees if the Bidder ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Bidder using a leased employee shall complete the City's *Leased Employee Affidavit* contained herein. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Bidder shall not commence work under this contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, non-renewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days of prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages. Bidder shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Bidder is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Bidder to ensure the subcontractors maintain the required coverage, shall not relieve the Bidder of any contractual responsibility, obligation or liability. The City reserves the right to increase the insurance coverage requirement as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this. Should at any time the Bidder or

subcontractors not maintain the insurance coverages required herein, the City may terminate the contract or at its sole discretion shall be authorized to purchase such coverages and charge the Bidder for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the contract.

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Standard Insurance Requirements			
Required	**Insurance**	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions.** Any Contractor using an employee leasing Company shall complete the Leased Employee Affidavit Exhibit Form.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million to be determined by the City	• If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. • If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: Combined Single Limit Bodily Injury and Property damage: $1,000,000 each occurrence $1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: Buildings – completed value of contract "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If agreement required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Installation Floater (IT)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: Coverage – equal to amount of contract	
	City Manager waives Payment and Performance Bond for work under $200,000 unless otherwise required by Department Director.		
	Unless otherwise required by law, City Manager waives insurance for FOB goods only purchases.		

52. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. The awarded firm is encouraged to accept payment via ACH. This can be accommodated after the contract is fully executed.

53. **IRREVOCABILITY OF RESPONSES**

Each Bidder agrees that responses shall remain open until the contract effective date not to exceed 90 days after the award selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the Bidder.

54. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Responses received after the response due date and time are late and shall not be considered. Modifications received after the response due date are also late and shall not be considered. Letters of withdrawal received after the response due date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and solicitation.

55. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

56. **LICENSES, PERMITS AND TAXES**

The Bidder shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted. The Bidder shall abide by all ordinances and laws pertaining to his/her operations and shall secure, at his/her expense, all licenses and permits necessary for construction and operation.

57. **LITERATURE (if applicable):**

If no brand, model or make is specified, Bidders shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services Bidder proposes to furnish.

58. **LOCAL PREFERENCE**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: https://dos.myflorida.com/sunbiz/.

59. **MAINTENANCE**

If maintenance is required for equipment purchased as a result of this solicitation, it is preferred that such maintenance be available to the City of Port Orange by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Schedule of Unit Pricing form for the solicitation. If the City of Port Orange opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and shall be priced accordingly.

60. **NAME BRANDS**

Specifications may reference name brands and model numbers. It is not the intent of the City of Port Orange to restrict these bids in such cases, but to establish a desired quality level of merchandise or to

meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with the Bidder, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.

61. **NON-DISCRIMINATION**

There shall be no discrimination as to race, color, religion, gender, age, marital status, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for or purchase of goods or services, or the subcontracting of work in performance of this contract.

62. **NON-EXCLUSIVITY OF CONTRACT**

The selected Bidder understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.

63. **NON-PERFORMANCE**

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.

64. **NOTICE TO CONTRACTOR**

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

65. **OPTIONAL CONTRACT USAGE**

As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

66. **PATENTS/COPYRIGHTS**

The successful Bidder agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

67. **PRE-BID CONFERENCE**

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the solicitation legal advertisement and solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Only Bidders attending a mandatory pre-bid conference will be eligible to submit a response. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly.

68. **PREPARATION OF RESPONSES**

In preparing responses, the Schedule of Unit Pricing form, the Bid Bond form (when a Bid Bond is required as bid security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti- Collusion Statement, and Drug Free Preference Statement must be properly executed in ink. The prescribed Schedule of Unit Prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the total bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the solicitation. The Bidder shall sign his/her name and give his/her business address in the spaces provided therefore. If the submittal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

69. **POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES**

The City may, at its sole and absolute discretion, reject any and all, or parts of responses; re- advertise the solicitation for new responses; postpone or cancel, at any time, the solicitation process; or waive any irregularities in the solicitation or in the responses received as a result of the solicitation, or to accept that response which best serves the interest of the City.

70. **PRICING**

Responses may not be withdrawn before the expiration of one-hundred-twenty (120) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after one-hundred-twenty (120) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Schedule of Unit Pricing form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting bids/proposals based on a lump sum basis, Bidders shall be required to submit a price for each line item listed on the Schedule of Unit Pricing in order to be considered for award.

71. **PRODUCTS/ESTIMATES**

Items included on the bid form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and estimated quantities provided on the Schedule of Unit Pricing are for bidding purposes only and are not guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

72. **PROPRIETARY INFORMATION**

Upon receipt by the City, responses to solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

73. **PROTECTION**

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the contractor during the term of contract, and the contractor shall be held responsible for any damage to the property occurring by reason of his/her operation on the property.

74. **PUBLIC ENTITY CRIMES**

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted Bidder list.

75. **PUBLIC RECORDS COMPLIANCE**

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE OFFICE OF THE CITY CLERK AT 386-506-5563, cityclerk@port-orange.org, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA, 32129.

The failure of contractor to comply with a public records request shall constitute a material breach of the contract.

76. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Bidders will not be able to procure a copy of their competitors' bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Bidder, or where a Bidder answers questions. In other words, neither Bidders, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Bidders, but the new law limits public attendance to portions of such meetings.

77. **PURCHASE ORDER AND DELIVERY**

The successful Bidder shall not deliver products or provide services without a City of Port Orange purchase order, signed by an authorized agent of the City of Port Orange. The fastest, most reasonable delivery time shall be indicated by the Bidder. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City of Port Orange without prejudice to other remedies provided by law. Where delivery times are critical, the City of Port Orange reserves the right to award accordingly.

78. **QUALITY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

79. **QUESTIONS/INTERPRETATIONS**

Questions regarding interpretation of responses, solicitation results or solicitation awards shall be directed in writing to the Purchasing Division and referenced by the solicitation number no later than the last day for questions as specified in the solicitation documents. The City of Port Orange shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

80. **RECORDS/AUDIT**

(a) The contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the contractor involving transactions related to this contract.

(b) The contractor further agrees to include in any subcontract for more than $10,000 entered into as a result of this contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

81. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

82. **REJECTING OF RESPONSES/RE-BIDDING**

The City reserves the right to accept or reject any or all responses or parts of responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all responses. If the lowest and best response exceeds the budgeted amount and the City Council does not make additional funds available, the Purchasing Division with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

83. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final solicitation selection, Bidders may be required to submit additional information which the City may deem necessary to further evaluate the Bidder's qualifications to perform under the terms of the solicitation and subsequent contract.

84. **REVIEW OF RESPONSES/SUBMISSIONS**

Each response will be reviewed to determine if the response is responsive to the submission requirements outlined in the solicitation. A responsive response is one which follows the requirements of the solicitation, includes all required documentation, is submitted in the format outlined in the solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your response non-responsive.

85. **RIGHT OF WITHDRAWAL**

A bid, proposal, statement, or reply may not be withdrawn before the expiration of one-hundred-twenty (120) days from the response due date.

86. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

All responses, inquiries, or correspondence relating to or in reference to a solicitation, and all reports, charts, and other documentation submitted by Bidders shall become the property of the City when received.

87. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The Bidder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

88. **SAMPLES**

Samples, when requested, must be furnished at, or before the bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Bidder's request, be returned within thirty (30) days after bid award at the Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

89. **SCRUTINIZED COMPANIES LIST**

The contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this contract for cause if the contractor is found to have submitted a false certification or if the contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The contractor shall provide a completed *Scrutinized Companies Certification* (Form 7.10), certifying the contractor's compliance with this section, prior to the execution of this contract.

90. **SEPARATION AND DISTRUBUTION**

The solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

91. **SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

92. **SIGNATURE REQUIRED**

All responses must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED RESPONSES WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

93. **SIGNED RESPONSE CONSIDERED AN OFFER**

The signed response is considered an offer on the part of the Bidder, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the Bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

94. **SILENCE OF SPECIFICATIONS**

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

95. **SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS**

Pursuant to Florida Statute 287.05701, the governing body of a county, municipality, special district, or any other political subdivision of the state may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is responsible. Furthermore, an awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

96. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Bidders shall use the solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder in ink. Responses shall be submitted by mail or hand delivery only. No response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City Clerk, City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 PM (Eastern Standard Time) on the date indicated in the solicitation documents or an addendum issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the Bidder and will not be opened. Bids (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/ package shall be clearly marked on the outside to include the bid project name, bid number, name and address of the Bidder.

97. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Bidder shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the solicitation; and, that the Bidder shall provide follow-up evidence that the Bidder maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Bidder/responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the solicitation. Information concerning certification with the Secretary of State may be obtained at https://dos.myflorida.com/sunbiz/manage-business/certification/. Contract documents shall be executed by the entity's duly authorized officer as evidenced by entity records.

98. **SUBCONTRACTING**

The awarded Bidder will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining written approval from the City of Port Orange.

99. **SUPPLEMENTAL MATERIALS**

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Bidder wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

100. **TAXES**

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

101. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time-period, the term will be given in the bid specifications.

102. **TERMINATION**

For Convenience: The City of Port Orange reserves the right to terminate the contract or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall determine that such termination is in the best interest of the City. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee,

postmarked or delivered to the contractor at least thirty (30) days prior to the date of termination, and specifically setting forth the effective date of termination.

For Default: The City may terminate the contract if the contractor breaches any of the terms therein, including, but not limited to, warranties of the contractor or if the contractor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but is not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the contract at any time for breach of contractual obligations by providing the contractor with a written notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the contractor. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the contractor responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the contractor as stipulated in City Code 2-276 Suspension and Disbarment.

For Non-Appropriation of Funds: If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this contract, then the City may terminate this contract upon thirty (30) days prior written notice to the contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

103. **TITLE TRANSFER**

Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The contractor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the purchase order as a "Deliver To:" address.

104. **UNBALANCED BID**

A mathematically unbalanced bid is when a Bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced bids will be rejected if the prices are deemed materially unbalanced.

105. **USE OF SOLICITATION FORMS**

The Bidder shall complete the appropriate solicitation form(s) included in the solicitation. All blanks on the solicitation forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the solicitation forms. Failure to fully complete the appropriate solicitation forms may result in disqualification of the response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional solicitation form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or entity must be that of an officer, partner or a sole proprietor of the entity making the response. The original response, and each copy submitted shall contain an original signature on the *Bidder's Acknowledgement Form* contained in each solicitation.

106. **VARIANCES**

For purposes of response evaluation, Bidders must indicate any variances, no matter how slight, contained in the response. No variations or exceptions by a Bidder will be considered or deemed a part of the response submitted unless such variances or exceptions are listed in the response and referenced in the space provided on the response pages. If variances are not stated, or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a response, the City does not necessarily accept any variances contained in the response. All variances submitted are subject to review and approval by the City. If any response contains material variances that, in the City's sole opinion, make that response conditional in nature, the City reserves the right to reject the response or part of the response that is declared, by the City, as conditional.

107. **WAIVER OF IRREGULARITIES**

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive responses will be considered. However, the City reserves the right to waive formalities or informalities in responses, to reject, with or without cause, any or all responses or portions of responses, or to interview or not interview individual Bidders, and to accept any responses or portions of responses deemed to be in the best interest of the City. The City Council shall grant the City Manager the ability to waive any and all non-substantial irregularities in any and all formal solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

108. **WARRANTIES**

Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the response. Bidders may not limit or exclude any implied warranties. The Bidder warrants that products sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of Port Orange may return the product for correction or replacement at the Bidder's expense. If the Bidder fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder's expense.

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SECTION 6 – SPECIAL REQUIREMENTS/INSTRUCTIONS

PERIOD OF OFFER VALIDITY:
Bids offered in this ITB must remain firm for a period of one-hundred-twenty (120) days from the ITB opening date.

FUNDING
Funding for this project includes grant monies from CDBG (Community Development Block Grant), F.I.N.D. (Florida Inland Navigation District), Volusia County ECHO (Environmental, Cultural, Historical, and Outdoor Recreation) and other City funding sources. The CDBG grant monies are subject to Federal Guidelines that include the Build America, Buy America Act (BABAA) and 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.

DAVIS BACON WAGES
This project includes Federal funding thereby requiring Bidders to follow the Davis Bacon Act. For current Davis Bacon wages. Please use this link: https://sam.gov/wage-determination/FL20250232/3 .

AWARD RECOMMENDATION:
It is the intent of the City to award a contract to the lowest responsive and responsible Bidder as outlined in Section 2 and (Attachment 1) Schedule of Unit Pricing.

CONTRACT TERM:
Three hundred seventy-five (375) days from issuance of Notice to Proceed from the City for substantial completion for the term of the contract.

ELIGIBILITY OF BIDDER:
To be eligible to respond to this ITB, the Bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal by completing Form 7.7 Statement of Bidder's Qualifications in its entirety. **Bidder must also have attended the mandatory Pre-Bid Conference and site visit.**

PROOF OF E-VERIFY REGISTRATION
Bidders who do not include proof of E-Verify registration with Form 7.11 City of Port Orange Contractor E-Verify Affidavit may be deemed non-responsive. Bidder must include printed pages from the E-Verify website showing company name and E-Verify registration number (My Company Profile). Bidder's failure to include Form 7.11 and proof of registration with their bid submittal may result in rejection of Bidder's submittal.

LICENSES AND PERMITS
Contractor is responsible for all applicable local and state licenses, permits and fees.

PAYMENT & PERFORMANCE BONDS
If awarded, the Bidder must be able to obtain payment and performance bonds from a surety company licensed in Florida and must submit proof of their present bonding capacity with their bid submittal package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's bonding capacity must be equal to or greater than 100% of the total amount bid. **Bidders who do not include their present bonding capacity letter in their submittal package may be deemed non-responsive.**

Upon award, the successful Bidder will be required to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of the contract amount to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the awarded Bidder the recording information for the bond to evidence that the Bidder has met the requirement of Florida law. The City will bill the cost of recording to the awarded Bidder.

BID BONDS:
The Bidder must submit with their bid package a certified check or bank draft, payable to the City of Port Orange, FL or a satisfactory bid bond executed by the Bidder and an acceptable surety in the amount equal to (5%) of the total amount of the bid. **If submitting a bid bond in lieu of a certified check or bank draft, the original bid bond must be included with bid submittal. If submitting a bid bond in lieu of a certified check or bank draft, Bidders who do not include their original bid bond with their submittal may be deemed non-responsive.**

ADDITIONAL INSURANCE REQUIREMENTS
In addition to the insurance requirements outlined on page 24 of this ITB, the awarded Contractor is required to provide **Contractor Pollution Liability** insurance. The Limits for Contractor Pollution Liability is outlined on page 25 in the Standard Insurance Requirements table.

NOTICE:
The City reserves the right to consider cooperative contracts, federal, state municipal etc., in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

SAFETY:
Contractor shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

[Remainder of page left intentionally blank]

Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain

compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over $2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall

approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to

cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained

under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or
cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH– 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.
(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
(4) Apprentices and trainees.
(i) Apprentices.
Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with

the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
(9) Disputes concerning labor standards.
Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
(10) Certification of eligibility.
(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

(i) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(iii) Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:
For all contracts over $100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the *Contract Work Hours and Safety Standards Act* and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) <u>Rights to Inventions Made Under a Contract or Agreement.</u>

(1) Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(2) If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended.

For contracts exceeding $150,000.00, the following provisions apply:

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
(2) The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
(3) **This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference**, is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies,

including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
   (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
   (ii) Meeting contract performance requirements; or
   (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(2) *Prohibitions.*

(i) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(ii) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

(i) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(ii) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*
2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement*.

(i) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(ii) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

(1) The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures,

and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub l 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over $100,000 must comply with Federal Drug Free workplace requirements as Drug-Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Not all FEMA financial assistance programs are subject to BABAA. Most disaster financial assistance programs are not subject to BABAA requirements, including the Public Assistance (PA), Hazard Mitigation Grant Program (HMGP),

Individual Assistance (IA), and Fire Mitigation Assistance Grant (FMAG) programs.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

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City of Port Orange

Community Development Block Grant Program (CDBG)

Operating & Procedures Manual

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Summary of the Community Development Block Grant (CDBG) Program:

This section summarizes the National Objectives, Eligible and Ineligible Activities, and citizen participation requirements of the CDBG program. For a more complete description, consult the Code of Federal Regulations, Title 24, Part 570.200(a)(2) and (3), 570.200-570.207, 570.506.

The primary objective of the Community Development Block Grant (CDBG) Program is the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate- income. Funds must be used to carry out activities that will meet one of the three National Objectives:

1. Benefit to low- and moderate- income persons
2. Prevention or elimination of slums or blight, or
3. Meet an urgent need

At least seventy percent (70%) of the total CDBG funds expended must be used for activities that benefit low- and moderate- income persons.

Basic Eligible Activities – 24 CFR 570.201

- Acquisition of Real Property – subject to limitations of 570.207
- Housing Rehabilitation – subject to 570.202
- Code Enforcement
- Public Facilities and Improvements – such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes
- Removal of Architectural Barriers – ADA Compliance/Handicap Access for public and/or private, qualifying projects
- Public Services – subject to 15% cap of total annual CDBG allocation
- Special Activities by Community-Based Development Organizations (CBDO) – 570.204
- Special Economic Development Activities – 570.203
- Relocation and Demolition

Basic Ineligible Activities – 24 CFR 570.207, 570.207(A), 570.201(e), 570.201(e)(1), (2), 570.203, 570.204, 570.209, 570.205, 570.206

- Buildings used for the general conduct of government
- General government expenses
- Political activities

The following activities may not be assisted unless certain criteria are met or they are carried out under the authority of 570.203 or 570.204:

- Purchase of construction equipment, purchase of furnishings and personal property, unless part of a public service activity or necessary for use by a grantee in the administration of the CDBG program

- Repair, operation, and maintenance of public facilities, improvements or services, except expenses associated with eligible public service activities, interim assistance, and office space for CDBG program staff
- New housing construction, except under the special provisions provided under 570.207(b)(3)(i)-(ii)
  Income payments of a subsistence nature

The City of Port Orange prioritizes: Affordable housing, Infrastructure, Facility Improvements, and Disaster recovery/relief

Citizen Participation Plan:

The City has completed a Citizen Participation Plan. This is located on the City's website at www.port-orange.org. A copy is also available in the City's Community Development office located on the second floor of City Hall at 1000 City Center Circle, Port Orange, Florida. This plan details the efforts to include and encourage public involvement in the development of the CDBG program.

Specifically, the City shall hold public meetings to solicit citizen views about community development needs.

How to Apply for CDBG funds:

The City of Port Orange practices an open process for selection of award of CDBG funding, unless otherwise noted in the Consolidated Plan/Action Plan. Projects will be considered based on eligibility of project, priority of project within the City's adopted Consolidated Plan and availability of funds left in the program as long as goals and objectives meet those in the Consolidated Plan/Action Plan. Program year begins October 1 and ends September 30.

If a proposed project meets a national objective and is considered an eligible activity, required information to be submitted must include:

1 Project Narrative/Description
2 Detailed pro-forma state and complete budget, including all operating expenses for the project (if applicable)
3 Articles of Incorporation (if applicable)
4 501(c)(3) documentation (if applicable)
5 List of Board of Directors (if applicable)
6 Authorization to request funds – documentation authorizing submission of request for funds. Must include copy of minutes in which this resolution or motion was recorded (if applicable)
7 Designation of Authorized Official (if applicable)
8 Organizational chart (if applicable)
9 Resume of Chief Program Administrator & Chief Fiscal Officer (if applicable)
10 Financial statement and audit (if applicable)
11 Conflict of Interest Certification (if applicable)
12 Documentation of compliance with national objective

Award Process:

Request for funding is reviewed to ensure project meets all requirements. Unless an RFP process is initiated, requests for funds are accepted on a first come first served basis and subject to fund availability.

In addition to meeting local and national goals, objectives, and eligibility criteria, a project's funding potential may be increased by demonstrating that the applicant has the ability to administer and complete the project; by showing how other forms of funding have been pursued and/or secured; and by exhibiting the project is not a duplication of service already provided in the area.

If determined eligible, a notification letter will be sent to the applicant (if other than an internal request for funding) with a commitment. Ineligible applications will receive notice as to why they did not qualify.

If funding is selected for an agency other than the City, applicant must sign a written contract with the City that details the agreements and requirements set forth in accordance with HUD, OMB and City regulations. In this instance, if the applicant is not awarded the full amount of the request, the scope of the project will be revised accordingly with approval from City staff. Funding cannot be awarded for expenditures made prior to a written contract.

If the applicant is creating affordable housing, a land use restriction agreement will be placed on the property to ensure affordability status at or below 80% of the area median income.

Mortgages may be required with some affordable housing projects.

City of Port Orange Procurement Statement:

All publicly funded procurement activities must be performed within the established policies and procedures of the City.

General guidelines

- . < $500.00 – No quotes required
- . $500 - $2,499.99 – Two verbal or written quotes required
- . $2,500 - $4,999.99 – Three verbal or written quotes required
- . $5,000 - $24,999.99 – Three written quotes required
- . $25,000+ - Formal sealed bids must be presented to City Council for approval

Credit Card Purchase limits:

- . 0-$1000 no quotes- (950 credit card limit)
- . $1000-$2499.00 two verbal or written quotes
- . $2499-$5000 three quotations - verbal or written – City Manager approval
- . $5000 - $24999 three written quotes required – City Manager
- . $25000 up formal bid threshold must be presented to City Council

Environmental Reviews:

Community Development Block Grant regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA). The Port Orange Community Development Block Grant Program must also determine whether a project meets other applicable statutory and regulatory requirements such as those of the Advisory Council on Historic Preservation and the Environmental Protection Agency.

General Responsibilities:

Federal regulations require that the City of Port Orange determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the ultimate effect of a proposed project, including the potential effects of both the CDBG and related project activities. For example, if CDBG funds are being used to extend a water line to a site for a new affordable housing project, then the ultimate effect of the project is not only the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the new housing project. The scope of an environmental review encompasses this definition of a project.

Subrecipient Requirements (if applicable):

If the City chooses to fund a subrecipient to carry out a CDBG-eligible project, the City may ask the subrecipient to assist in the development of the ERR by providing additional information, maps and site data. In some cases, project subrecipients may be asked to complete a biological assessment or gain project clearance from applicable state regulatory agencies.

Subrecipients shall comply with all terms and conditions of and shall implement all required mitigation measured identified in the environmental review record completed for their project. The subrecipient shall ensure that all activities related to their project including property acquisition, construction, and the use of the property/facilities are conducted in accordance with the project scope, as defined in the Environmental Review Record and with the conditions set out in it. The subrecipient shall also retain a copy of any required environmental data and CDBG Program's written notice to proceed in their project files.

CDBG Program Requirements:

The City of Port Orange will complete the Environmental Review Record. The time required for completion of the ERR can vary from weeks to months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment (BA) is necessary, the subrecipient (if any) will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid for from project funds.

After completing the Environmental Review Record, the City may publish a notice of a Finding of No Significant Impact (FONSI) in a local newspaper declaring intent to request release of project funds from HUD. After the release of funds from HUD, the City will send the subrecipient (if any) a contract with a written notice to begin the project. *No project activities or project costs may be incurred until receipt of the notice to proceed.*

Labor Standards:

All CDBG activities are subject to Federal labor standards requirements as identified in all contracts. The Federal labor requirements for which the CDBG program monitors are detailed in this section.

General Requirements:

The labor standards for construction contracts are set forth in four federal statutes (additional information regarding these federal regulations may be obtained by contacting the City's Community Development office or on the internet at www.hud.gov):

Section 110 of the Housing and Community Development Act of 1974, as amended (Title I): All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid at rates not less than those prevailing on similar constriction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This section also applies to the rehabilitation of residential property if property consists of eight or more units.

Davis-Bacon Act: All laborers or mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor; regardless of contractual relationship. Wages must be paid weekly.

Contract Work Hours and Safety Standards Act (for prime contracts over $100,000): The wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard work week of forty hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week.

No person employed on the job site shall be required to work in surroundings or any other working conditions which are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

Copeland Act (Anti-Kickback Law): Whoever by force, intimidation or threat of procuring dismissal from employment or by any other manner whatsoever, induces any persons employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under their contract of employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Monitoring/Enforcing Federal Labor Standards Provisions:

The City of Port Orange CDBG Program will be responsible for monitoring of contractor compliance with the Federal Labor Standards Provisions.

Use of Volunteers:

Volunteers on Community Development Block Grant projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing services to a grant recipient (local government or non-profit organization) without promise, expectation, or receipt of compensation and they are not otherwise employed, at any time, on the project. Federal rules at 24 CFR Part 70.3 cover the use of volunteers on CDBG assisted construction projects. If volunteers are going to be used on the project, the recipient must comply with the following reporting requirements:

- For projects that include paid construction workers, the recipient must record volunteers' names and hours volunteered; and

- For projects that will only use volunteers, recipients must record the number of volunteers and the number of hours worked, collectively.

Additional restrictions regarding use of volunteers on CDBG projects may be enforced by state or local statute, rule or practice.

Finance/Accounting:

This section addresses the financial and accounting aspects of the CDBG program. The following procedures are guidelines that should be adhered to in financial transactions to meet federal requirements.

General Requirements:

In accordance with OMB Circular A-100, A-128 or A-133, the City (and any/all subrecipients) must meet the audit requirements specified therein. Additionally, all financial transactions with CDBG monies are subject to federal audit. The City's CDBG program administrator will insure HUD form 60002, section 3 Summary Reports are filed in accordance with Federal guidelines 24CFR 570.607(b). The City's Finance Department will monitor compliance.

Project Budget:

The approved grant budget contained in the City's grant agreement with HUD identifies the activities determined to be eligible for reimbursement by the grant funds. Grant funds cannot be used for pre-agreement costs that are incurred before the grant contract is signed. The City's financial system for tracking CDBG should:

- Maintain the amounts budgeted for eligible activities in its accounting records
- Include both obligations/expenditures and unexpended/unobligated balances for each line item
- Periodically compare actual obligations and expenditures to-date against planned obligations and expenditures and against projected accomplishments for the grant project

Internal Controls:

Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records which create accountability in the financial management system and safeguard its cash, property, and assets. The internal controls must protect the integrity of the grant funds. At a minimum, the system should provide for adequate separation of duties so that no one person has authority over an entire financial transaction. One person should not have control over more than one of the following:

- Authorization to execute transaction
- Recording the transaction
- Custody of the assets involved in the transaction

Financial Reporting:

The City's financial system will generate regular reports that permit an observer to compare actual expenditures against the approved budget.

Other Financial System Requirements:

The City's financial system will be set up to satisfy an auditor conducting an audit. During an audit, the auditor will examine the records to ascertain if:

- Funds are properly budgeted and approved
- Budget revisions have been documented and approved

- Personnel changes are properly allocated to the block grant and based on payroll documents such as time and attendance records

- All expenditures can be traced to source documents (purchase orders, invoices, cancelled checks)
- Drawdowns have been timely
- Only allowable funds have been claimed on the project
- Property has been managed and inventoried properly
- In-kind costs and costs billed to other funds are clearly documented

Program Income:

Program income is defined as the gross income that has been directly generated from use of CDBG funds. Examples include:

- Gross income from the use or rental of real property that has been acquired, constructed, or improved with CDBG funds. Cost incidentals to the generation of the income are deducted from the gross income
- Interest earned on program income
- Funds collected through special assessments that are made against properties owned and occupied by non-low and moderate-income households where the assessments have been made to recover some or all of the CDBG portion of a public improvement
- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds where the disposition occurs within a five-year period after initial expenditure of the CDBG funds

Fair Housing/ADA:

The CDBG program triggers several additional federal requirements that affect CDBG projects. These requirements include:

1. Fair Housing
2. Handicap Accessibility
3. Lead Based Paint

General Requirements:

1) **Fair Housing Activities** The City, as well as any subrecipients, are responsible for taking necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. Further, the City and any subrecipients should strive to promote a strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including minorities and female-headed households. Possible actions the City, and any subrecipients, can take are as follows:

- Review zoning, building and housing codes and revise if necessary to encourage equal opportunity in housing
- Consider fair housing priorities when developing land use plans for public facilities and housing
- Develop or strengthen local fair housing laws, including enforcement powers and sanctions
- Require private developers and real estate agents to use HUD affirmative marketing and advertising practices

2) **Handicap Accessibility**

A) Americans with Disabilities Act: The Americans with Disabilities Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

B) Section 504 Handicap Accessibility Policy: Section 504 was enacted as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of handicap in all programs and activities receiving federal assistance and, in 1978, it was amended to apply to all programs conducted by the federal government. This regulation provides that no qualified individual with handicaps

shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity that receives federal financial assistance.

The City of Port Orange will provide sign interpreters for public meetings upon request for CDBG program accessibility. All public meeting sites are handicap accessible and auxiliary aids are available for those individuals requesting them. Structures built or rehabilitated must be made handicap accessible. Structures designed, built or altered (rehabilitated) with CDBG funds will conform to the Uniform Federally Accessibility Standards (UFAS), which was published in the Federal Register on August 7, 1984 (49 CFR 13518). The UFAS technical requirements meet or exceed comparable provisions of ANSI 117.1-1980 Specifications for Making Buildings and Facilities Accessible to, and Useable by Physically Handicapped People.

3) **Lead-Based Paint** (applies to residential housing projects/programs) The use of lead-based paint is prohibited. CDBG recipients must certify that no lead-based paint will be used in residential units assisted with CDBG funds and must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint.

The federal requirements pertaining to lead-based paint are contained in 24 CFR Part 35. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD. A copy may be obtained from the City of Port Orange.

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Article 1: Labor Standards

A. **Applicability.** The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

B. **Minimum Wages.** Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (**"Administrator"**). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis- Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid.
Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis- Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired, whether paper (Optional Form WH- 347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347.pdf or its successor site), or electronically pursuant to Program Obligations. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or

supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

program, but who has been certified by the Office of Apprenticeship, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

7. **Contract termination and debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both."

C. Contract Work Hours and Safety Standards Act.

1. **Applicability and Definitions.** This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than $100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. **Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to

race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non- metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than $100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR

Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

End of HUD Provisions

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"General Decision Number: FL20250232 03/14/2025

Superseded General Decision Number: FL20240232

State: Florida

Construction Type: Building

Counties: Flagler and Volusia Counties in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	01/24/2025

2 01/31/2025
3 03/14/2025

ASBE0067-003 01/01/2021

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 30.12	13.11

ELEC0756-005 09/02/2024

	Rates	Fringes
ELECTRICIAN	$ 28.42	3%+13.10

* ELEV0139-002 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC	$ 53.73	38.435+a+b

FOOTNOTE:
A. Employer contributions 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; Employer contributions 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

B. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; The Friday after Thanksgiving Day; and Christmas Day.

ENGI0487-022 07/01/2016

	Rates	Fringes
OPERATOR: Forklift	$ 23.25	9.20
OPERATOR: Mechanic	$ 32.05	9.20
OPERATOR: Oiler	$ 23.50	9.20

ENGI0673-016 05/01/2024

	Rates	Fringes
OPERATOR: Crane		
Gantry Crane; Bridge Crane	$ 36.00	15.10
Tower Crane; Crawler Crane; Truck Crane; Hydro Crane	$ 36.00	15.10

IRON0402-001 10/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 28.90	15.66

PLUM0295-002 01/01/2025

	Rates	Fringes
PLUMBER	$ 41.60	22.68

PLUM0295-005 01/01/2025

	Rates	Fringes
HVAC MECHANIC (Includes Pipe and Unit Installation)	$ 33.90	15.15

SFFL0821-004 01/01/2025

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 34.03	23.70

SHEE0015-006 07/01/2023

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation)	$ 25.75	16.92

* SUFL2014-041 08/16/2016

	Rates	Fringes
CARPENTER	$ 17.92	0.00
CEMENT MASON/CONCRETE FINISHER	$ 19.00	0.00
IRONWORKER, REINFORCING	$ 22.81	11.58
IRONWORKER, STRUCTURAL	$ 21.87	0.00
LABORER: Common or General	$ 11.61 **	0.00
LABORER: Mason Tender - Cement/Concrete	$ 12.00 **	0.00
LABORER: Pipelayer	$ 15.00 **	0.54
OPERATOR: Backhoe/Excavator/Trackhoe	$ 17.80	2.81
OPERATOR: Bulldozer	$ 15.40 **	1.90
OPERATOR: Grader/Blade	$ 18.97	0.00
OPERATOR: Loader	$ 16.30 **	0.00
OPERATOR: Roller	$ 14.43 **	4.78
PAINTER: Brush, Roller and Spray	$ 13.54 **	0.00
PIPEFITTER, Excludes HVAC Pipe and Unit Installation	$ 23.16	10.34
ROOFER	$ 16.59 **	0.00
TILE SETTER	$ 17.25 **	1.74
TRUCK DRIVER: Dump Truck	$ 12.95 **	2.28
TRUCK DRIVER: Lowboy Truck	$ 14.24 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

_____ Form 7.2 – Bidder's Acknowledgement

_____ Form 7.3 – Addendum and Change Order Procedure Acknowledgement

_____ Form 7.4 – Drug Free Preference Statement

_____ Form 7.5 – Public Entity Crimes Statement

_____ Form 7.6 – Anti-Collusion

_____ Form 7.7 – Statement of Bidder's Qualifications

_____ Form 7.8 – Professional References for Previous Experience

_____ Form 7.9 – List of Subcontractors

_____ Form 7.10 – Scrutinized Companies Certification

_____ Form 7.11 – E-Verify Affidavit

_____ Form 7.12 – Debarment, Suspension and Other Responsibility Matters

_____ Form 7.13 – Affidavit of Compliance With F.S. 287.138

_____ Form 7.14 – No Submittal Response

_____ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING

_____ (Attachment 1) – Schedule of Unit Pricing

_____ Current Bonding Capacity Letter (as outlined in Section 6)

_____ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)

_____ Current Tax Receipt of Bidder's municipality

_____ Original Bid Bond or certified check or bank draft (as outlined in Section 6)

_____ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: _____

Name of Business

_____
Authorized Signature

_____
Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the Bidder/Contractor as its act and deed and that the Bidder/Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this bid is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a bid for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Bidder interested in said ITB; and that the undersigned executed this Bidder's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for the contract under which services will be performed, does hereby propose to furnish all labor, equipment and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☐I take NO exceptions. ☐Exceptions (list below; add additional pages if necessary):

_____

_____

_____ _____

Name of Business Mailing Address

_____ _____

Authorized Signature City, State & Zip Code

_____ _____

Printed Name and Title Telephone Number

_____ _____

Federal Identification No. E-mail Address

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this

_____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

I acknowledge receipt and incorporation of the following addenda and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum#_____ Date:_____ Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this

_____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

(To be signed in the presence of a notary public or other authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant_____, who, being by me first duly sworn, made the following statement:

1. The business address of _____(name of Offeror or business) is

   _____.

2. My relationship to _____(name of Offeror or business) is _____

   _____(relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____. A copy of the order of the Division Administrative Hearing is attached. **(Draw a line through paragraph 7 if paragraph 6 above applies)**

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

COUNTY OF: _____

_____
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION

By signing this form, the Bidder agrees that this bid is made without any other understanding, agreement or connection with any person, corporation or firm submitting a bid for the same purpose and that the bid is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISION, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE BIDDERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: _____

SIGNED BY: _____
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Bidder: _____

B. Permanent main office address: _____

C. Date organized: _____

D. If a corporation, where incorporated: _____

E. How many years have you been engaged in the business under your present firm or trade name? _____

F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

G. General character of work performed by your company: _____

H. Have you ever failed to complete any work awarded to you? If so, where and why?_____

I. Have you ever defaulted on a contract? If so, where and why? _____

J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

K. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL**

L. Credit currently available: $_____

M. Give bank name, contact name and phone number: _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐Yes☐No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals compromising the Statement of Bidder's Qualifications.

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

COUNTY OF: _____

_____
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange)**

1. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

2. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

3. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

(Form 7.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. A minimum of three (3) projects must be listed below. The Owner reserves the right to check references and confirm information provided herein.

List clients to whom you currently provide or have in the past provided equal or similar services to those required under the City's contract as outlined in this bid package. A minimum of three (3) projects shall be listed below in order to bid on this contract. The Owner reserves the right to check references and confirm information provided herein.

1. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

2. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

3. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative**. Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf
(Print Name and Title)

of_____ ("Company"), certify that _____
(Company Name) (Company Name)

does not:
1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over $1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

_____ _____
COMPANY NAME SIGNATURE

_____ _____
PRINT NAME TITLE

STATE OF FLORIDA COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

FORM 7.11 – E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

I, the undersigned hereby certify that _____ (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of _____ (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

_____ _____

Print or Type Name, Title Signature of Affiant

_____ _____

Federal Employer ID Number (FEIN) E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 7.12 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Primary Covered Transactions

(To be completed by Prime Contractor)

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
   (b) Have not within a three-year period preceding this proposal bee convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
   (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
   (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____	_____
Organization Name	Bid Number or Project Name
_____	_____
Name and Title of Authorized Representative	Signature Date

This document must be completed and returned with your Submittal

FORM 7.13 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH FOREIGN ENTITIES OF CONCERN

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the _____ of _____
   (Title) (Business Name)
   which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1)(c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____
Notary Public, State of Florida at Large: (seal)
Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: _____

This document must be completed and returned with your Submittal

FORM 7.14 – NO BID RESPONSE

If your company will not be submitting a bid in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

☐Specifications "too tight" or geared toward on brand or manufacturer (please explain below)

☐Insufficient time to respond

☐Specifications unclear (please explain below)

☐We do not offer this product/service or an equivalent

☐Our product schedule does not permit us to perform within stated timeline for the project

☐Unable to meet specifications

☐Unable to meet bond requirements

☐Unable to hold prices firm throughout the term of the contract period

☐Unable to meet insurance requirements

☐Other: _____

Print Name: _____

Signature: _____ Date:_____

Additional Information:

_____

_____

_____

_____

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name & Title of Contractor's Authorized Official

Date: _____

This document must be completed and returned with your Submittal

(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Name of Business:	
Contact Person:	
Email Address:	
Authorized Signature:	

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization (Including Dewatering)	LS	1		$ -
2	Construction and As-Built Survey	LS	1		$ -
3	Vibration Monitoring	LS	1		$ -
4	Environmental Compliance (Including Turbitidity Control)	LS	1		$ -
5	Demolition, Hauling, and Disposal	LS	1		$ -
6	Aluminum Gangway (30' x 5')	EA	4	$ -	$ -
7	Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles)	SF	960	$ -	$ -
8	Fixed Concrete Access Dock	EA	3	$ -	$ -
9	Timber Access Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade)	SF	320	$ -	$ -
10	CMI UC-50 Composite Sheet Pile or Approved Equivalent	LF	242	$ -	$ -
11	Concrete Boat Ramp	SF	6,560	$ -	$ -
12	FDOT Aluminum Railing - Type 1 Picket Infill Panel	LF	232	$ -	$ -
13	Milling (8-Inch Depth)	SY	2,178	$ -	$ -
14	2-Inch Type S-1, S-2, or Superpave, 12.5 mm	TN	240	$ -	$ -
15	6-Inch Limerock Base Course	SY	2,178	$ -	$ -
16	Pavement Marking and ADA Signs	LS	1		$ -
17	Concrete Bumper Guards	EA	22	$ -	$ -
18	Bollards	EA	4	$ -	$ -
19	Environmental Signs and Information Kiosk	LS	1		$ -
20	Concrete Flush Curb	LF	60	$ -	$ -
				TOTAL PRICE:	$ -

LEGEND
EA - EACH
LF - LINEAR FEET
LS - LUMP SUM
SF - SQUARE FEET
SY - SQUARE YARD
TN - TON

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____ _____, Tel.: _____ , (hereinafter called "PRINCIPAL"), and _____ , as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____ _____, Tel:_____(hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of_____dollars and (_____)/100 ($_____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated_____, 20_____ , for:

Project Name/Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____day of_____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL:

_____
Signature

_____
Corporate Officer & Title

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

_____

_____

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

SURETY:

_____
Attorney-in-Fact (signature)

_____
Name & Title

_____
Name of Local Resident Agent

_____
City, State, Zip

_____
Telephone:
A.M. Best No.:_____ NAIC No.:_____

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____(corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

_____
Signature of Affiant

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

_____ Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

END OF BID BOND

This document must be completed and returned with your Submittal

FRONT PAGE FOR BOND REQUIRED BY SECTION 255.05, F.S.

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. _____

PRINCIPAL:
Developer or Contractor: _____
Principal Business Address: _____
_____
Contact Person: _____
Phone Number: _____

SURETY: _____
Address: _____
_____
Contact Person: _____
Phone Number: _____

OWNER: City of Port Orange, Florida, a chartered municipal corporation
1000 City Center Circle
Port Orange, Florida 32129-4144
Contact Person: City Manager
Phone Number: (386) 506-5501

CO-OBLIGEE: County of Volusia, a political subdivision of the State of Florida
123 West Indiana Avenue
DeLand, Florida 32720
Contact Person: County Manager
Phone Number: (386) 736-2700

Amount: **$**_____ **City Project Number:** _____

Description of Work: _____

Project Location: _____

Legal Description: _____
_____

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

[CA____]
[MTR/sal 2015-02-10]

_____

_____

Bond No._____

COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION

per Section 255.05, Florida Statutes
Guaranty for Construction of Public Improvements

BY THIS BOND, We, **_____,** as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City" and **COUNTY OF VOLUSIA**, a political subdivision of the State of Florida "Co-Obligee," in the sum of _____ **AND __/100 DOLLARS** (**$_____**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Standard Contract for Services, having an effective date of _____, entered into by and between the Principal and the City, for _____, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and

3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2), (8) and (10), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of _____, 202__.

Attest:

_____
(Principal)

_____
(As to Corporate Principal) Secretary

By:_____

_____

_____
(Witness to Principal)

(Corporate Seal)

_____
(Surety)

_____
(Witness to Surety)

By:_____
Name:_____
(Attorney-in-Fact)

(Corporate Seal)

NOTE: ***Date of BOND must not be prior to date of Contract.*** *If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.*

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT #_____

☐ I hereby certify that I do not utilize an employee leasing company or employ leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing agreement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the workers' compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of _____

County of _____

I, _____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20____ to _____, 20____.

WITNESS:

By:_____

Name:_____

CONTRACTOR:

Company:_____

By:_____

Name/Title: _____

Sworn to/Affirmed and subscribed before me this _____ day of _____, 20____, by _____, who is personally known to me or who produced _____ as identification.

_____

NOTARY PUBLIC – STATE OF

Type or Print Name:_____

Commission No.: _____

Commission Expires:_____

(Seal)

IMPORTANT: This certificate must be completed and returned by the Awarded Proposer upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF FLORIDA §
§
COUNTY OF VOLUSIA §

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is _____. I am over the age of Twenty-one years old. I am the _____ of_____, a non- governmental entity which does business in the State of Florida, hereinafter called the "Entity."
   (Title) **(Business Name)**
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: _____, 20___

Signed: _____
Print Name: _____
Title: _____

SUBSCRIBED AND SWORN before me by means of [_XX_] physical presence or [__] online notarization on the ____ day of _____, 20__ by _____ as _____ on behalf of _____ who is personally known to me or who has produced _____ as identification.

(Notary Seal)

_____
Notary Public, State of Florida
Printed name, commission and expiration of commission term

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and **_____** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

_____.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

_____.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, **_____, P.E.** ("Engineer") **of _____,** and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within **____** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

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4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner $0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $0.00 for each day that expires after such time until the Work is completed and ready for final payment.

3. Deleted in its entirety.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

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ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. **95%** percent of the value of the Work completed (with the balance being retainage).

1) Deleted in its entirety.

b. Deleted in its entirety.

B. Owner shall withhold Five percent (5%) of each progress payment as retainage.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest* Deleted in its entirety.

A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement (pages 1 to __, inclusive).

2. Bonds:

a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).

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3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages __ to ___, inclusive).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
7. Addendum No. __ (pages __ to __, inclusive).
8. Addendum No. __ (pages __ to __, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
    a. Exhibit No. 1 Contractor's Bid Schedule (page __, inclusive).
    b. Exhibit No. 2 Contractor's Proposal (pages __ to __, inclusive).
    c. Exhibit No. 3 Composite Exhibit No. 3 City's _____ (pages __ to ___, not attached, on file with office of the City Clerk).
    d. Exhibit No. 4 City of Port Orange Community Development Block Grant Program ("CDBG") Operating and Procedures Manual (pages 1 to 22, inclusive).
    e. Exhibit No 5 General Decision Number FL_____ Davis-Bacon Wage Determination (pages 1 to 6, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed.
    b. Work Change Directives.
    c. Change Orders.
    d. Field Orders.
    e. Warranty Bond, if any.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

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2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

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1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.02 *Successors and Assigns*

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.03 *Severability*

Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions and parts shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable

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provision or part that comes as close as possible to expressing the intention of the stricken provision.

9.04 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

There are no intended third-party beneficiaries to the Contract.

9.06 *Public Record Compliance*

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically: (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the City would provide the records at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

9.07 *Records*

The design, permits and all other records prepared by the Contractor, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Contractor shall be retained by the Contractor for the requisite time set forth in Florida Administration Code Rule 1 b-24.

http://dos.myflorida.com/library-archives/records-management/. Contractor may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. Contractor agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney.

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9.08 *Force Majure*

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

9.09 *Contract construction*

This Contract may be executed in one or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Contract shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until both Parties have signed this Contract.

9.10 *Financial Disclosures*

During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts in accordance with Generally Accepted Accounting Principals (GAAP). Contractor further covenants and agrees that in the event the Contractor becomes insolvent and/or fails to pay its current obligations when they become due, Contractor shall so advise Owner of such situation and, upon request from the Owner, Contractor shall provide to Owner financial statements of Contractor, including current income and expense statements of Contractor, consolidated balance sheets signed by a financial officer of Contractor, and audited reports provided by Contractor to Contractor's Surety, audited financial statements certified by a Certified Public Accountant concerning the financial affairs of the Contractor and all affiliates of Contractor, and such other financial information requested by Owner. All such financial information shall comply with GAAP.

In the event that Contractor becomes insolvent and/or fails to pay its obligations when they become due, Contractor hereby authorized its sureties, lenders, financial institutions and other third parties to release Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding paragraph.

9.11 *Waiver of Jury Trial*

All parties hereby waive any and all right to any trial by jury in any action or proceeding arising directly or indirectly hereunder.

9.12 *E-Verify*

Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract and shall expressly require any sub-contractors performing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

9.13 *Compliance with Other Federal Standards*

(a) Termination for Cause. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms are set forth in Article 16 of General Conditions.

**EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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(b) Termination for Convenience. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Article 16 of General Conditions.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant

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orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.

When required by the federal program legislation, prime construction contracts over $2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to

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meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

® In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or

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any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number

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for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

® The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH– 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or

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transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer

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be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

® Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

(i) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include the clause in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor the contract clause.

(iii) Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over $100,000 that involve the employment of mechanics, laborers, and construction work:

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(aa) Compliance with the Contract Work Hours and Safety Standards Act. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(aa) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the *Contract Work Hours and Safety Standards Act* and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding $150,000.00, the following provisions apply:

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
(3) The Contractor agrees to include these requirements in each subcontract

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exceeding $150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
(2) The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

(i) Suspension and Debarment. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
(3) This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference, is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
(4) The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer

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or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*, included in the solicitation and made a part hereof by reference.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
   (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
   (ii) Meeting contract performance requirements; or
   (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

If applicable to the Federal awarding agency requirements:

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

(2) *Prohibitions.*

(i) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

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(ii) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(aa) *Exceptions.*

(i) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(ii) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*

2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement*.

(aa) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

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(aa) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

aa. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

aa. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(aa) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), authorized representatives of the United States Department of Housing and Urban and Development ("HUD"), the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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(aa) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(aa) The Contractor agrees to provide the HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(aa) In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the HUD/CDBG Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under the Federal agency award or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

(p) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that HUD and Community Development Block Grant Program ("CDBG") financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, HUD and CDBG policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(q) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(r) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(s) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(t) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural

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works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(u) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub l 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over $100,000 must comply with Federal Drug Free workplace requirements as Drug-Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(v) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(w) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the HUD and CDBG grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(x) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(y) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(z) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by Housing and Urban Development ("HUD").

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to HUD, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to HUD.

Required Certification: Unless otherwise waived for HUD CDBG financial assistance programs that are subject to BABAA, Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Contractor:

_____
(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If company is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

_____

_____

_____

Phone: _____

Email: _____

License No.: _____

State: _____

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Owner:

City of Port Orange

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Scott Stiltner

(typed or printed)

Title: Mayor

(typed or printed)

Attest: Robin L. Fenwick, MMC

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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EJCDC General Conditions

Consisting of 74 Pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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10. *Claim*

    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

    b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

    c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

    d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

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20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

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30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions."

34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. Emergency *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

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extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. Deleted in its entirety.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made

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to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
5. If Contractor submits a schedule indicating an intention to achieve completion of the Wok prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.
6. The Contractor acknowledges that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

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performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by careful review of the Contract Documents including pertinent figures and applicable field measurements and dimensions therein..

B. *ResolvingDiscrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times shall not commence to run and Contractor shall not commence the Work until Owner issues a Notice to Proceed . A Notice to Proceed may be issued by Owner at any time after the Effective Date of the Contract.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date specified in the Notice to Proceed which shall cause the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in Contract Times.

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B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions not anticipated or customary in Volusia County;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Deleted in its entirety.
3. Adjustments of Contract Times are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. Deleted in its entirety.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

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F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Deleted in its entirety.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and

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subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

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Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

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B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract

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Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

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C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

   b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. Contractor gave the notice required in Paragraph 5.05.B.

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2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such

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removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. Deleted in its entirety.

J. Deleted in its entirety..

K. Deleted in its entirety.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract~~,~~. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in Florida, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. Prior to the date of commencement as set forth in the Notice to Proceed, if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

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G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.

B. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized in the State of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Deleted in its entirety.

F. Failure of Owner to demand such certificates or other evidence of the Contractor's full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

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H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If Contractor does not purchase or maintain the insurance required by the Contract, Contractor shall notify the Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, the Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner's interests at the expense of the Contactor who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

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2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;

5. include completed operations coverage:

   a. Such insurance shall remain in effect for 10 years after Substantial Completion.

   b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.

6. make the Contractor solely responsible for any insurance deductible or self-insured retention.

7. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

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The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Contractor's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner through Contractor will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors,

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members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Deleted in its entirety.

1. Deleted in its entirety.

C. Deleted in its entirety.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

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E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding jobsite conduct.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

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players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other sanitary facilities within the Owner's existing buildings or on-site facilities.

D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For

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the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that the proposed item:

1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

3) has a proven record of performance and availability of responsive service; and

4) is not objectionable to Owner.

b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that

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named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

      2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

      3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

   c. will identify:

      1) all variations of the proposed substitute item from the item specified; and

      2) available engineering, sales, maintenance, repair, and replacement services.

   d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

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C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

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F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. Deleted in its entirety.

C. Deleted in its entirety.

7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable

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at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

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Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

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accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

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3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

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thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

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c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

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5. Any review and approval of a Shop Drawing or Sample submittal;
6. The issuance of a notice of acceptability by Engineer;
7. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .

B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

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in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

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set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

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9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Deleted in its entirety.*

A. Deleted in its entirety.N/A

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On

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the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

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10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

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11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Emergency *Work Change Directives*

A. An Emergency Work Change Directive may only be used in emergency situations and will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification documented by an Emergency Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Emergency Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a written Emergency Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design

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concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the

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basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

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B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Recommendation on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of

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Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

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ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety.

A. Deleted in its entirety.

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ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

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superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

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surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants,

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purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

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drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

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E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

   a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

   b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

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2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

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14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable

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to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the

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provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work

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under Paragraph 13.03, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.

6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, requiring correction or replacement;

   b. the Contract Price has been reduced by Change Orders;

   c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

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d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

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l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Punch List items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a Punch List of items to be completed or corrected before final payment Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised Punch List of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

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D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

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15.05 *Final Inspection – Punch List*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

   e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights and Liens filed in connection with the Work.

3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) all payrolls, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its

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option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25) days of the final Application for Payment being stamped as received by Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;

2. correct such defective Work;

3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

4. Contractor's repeated disregard of the authority of Owner or Engineer:

5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

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Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

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Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Deleted in its entirety.A. Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.B. Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.3. Deleted in its entirety.*

1. *Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.*
2. *Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.*
3. *Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ___, but in no event after the expiration of the applicable statute of limitations.*
4. *The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.*
5. *Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.*
6. *In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the*

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Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the

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Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the State of Florida.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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EJCDC General Conditions
Additions and Deletions Version

Consisting of 87 pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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GUIDELINES FOR USE OF EJCDC® C-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.

2.0 OTHER DOCUMENTS

EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.

These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost-Plus-Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).

The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

3.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.

If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.

4.0 EDITING THIS DOCUMENT

Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.

Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the

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user must comply with the terms of the License Agreement, Paragraph 4.0, Document Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term "Standard EJCDC Text" for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.

2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using "Track Changes" (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.

3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.

4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any "Track Changes," redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at www.ejcdc.org and the websites of EJCDC's sponsoring organizations.

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STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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10. *Claim*

    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

    b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

    c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

    d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

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20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

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30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions."

3~~4~~3. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be ~~occupied and/or~~ utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work. ~~Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner to begin to utilize the entire Project for the purposes for which it was intended.~~

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. Emergency *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

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extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. Deleted in its entirety.~~*Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion ~~and Final Completion~~ date~~s~~;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

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2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, ~~or~~ Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a ~~dlay~~delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

5. If Contractor submits a schedule indicating an intention to achieve completion of the Wok prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.

6. The Contractor acknowledges ~~thtthat~~ the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

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performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by ~~carefully studying and comparing~~careful review of the Contract Documents ~~and checking and verifying~~including pertinent figures ~~therein~~ and ~~all~~ applicable field measurements and dimensions therein..

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed ~~(Old 2.03)~~*

A. The Contract Times ~~will~~shall not commence to run and Contractor shall not commence ~~on the 30th day after the Effective Date of the Contract or, if~~the Work until Owner issues a Notice to

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Proceed ~~is given, on the day indicated in the Notice to Proceed~~. A Notice to Proceed may be ~~given~~issued by Owner at any time ~~within 30 days~~ after the Effective Date of the Contract. ~~In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date ~~when~~ specified in the Notice to Proceed which shall cause the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in ~~Contract Price or~~ Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption,

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and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated ~~C~~causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions not anticipated or customary in Volusia County;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times ~~or Contract Price~~ is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Deleted in its entirety.~~Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.~~
3. Adjustments of Contract Times ~~or Contract Price~~ are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times ~~or Contract Price~~ must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

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5. Deleted in its entirety.~~The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands* ~~*(Old 4.01)*~~

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Deleted in its entirety.~~Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 *Use of Site and Other Areas* ~~*(Old 6.11)*~~

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such

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damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell ~~tower~~ ~~floors~~pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects~~.~~; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

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5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

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2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

   b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

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c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

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5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in

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Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

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of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv)

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Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

J. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence~~.

K. Deleted in its entirety.~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~

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ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a payment and performance bond ~~and a payment bond~~ in accordance with Sec. ~~,~~ 255.05, Florida Statutes, ~~each~~ in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract~~, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury~~. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in ~~the state or jurisdiction in which the Project is located~~Florida, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. Prior to the date of commencement as set forth in the Notice to Proceed, ~~I~~if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

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6.02 *Insurance—General Provisions*

A. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental~~ry~~ Conditions shall govern.

B. All insurance required by the Contract to be purchased and maintained by ~~Owner or~~ Contractor shall be obtained from insurance companies that are duly licensed or authorized in the ~~s~~State ~~or jurisdiction in which the Project is located~~of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Deleted in its entirety.~~Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~

F. Failure of Owner ~~or Contractor~~ to demand such certificates or other evidence of the Contractor~~other party~~'s full compliance with these insurance requirements, or failure of Owner ~~or Contractor~~ to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the ~~other party~~Contractor's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability

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policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If ~~either party~~Contractor does not purchase or maintain the insurance required ~~of such party~~ by the Contract, Contractor~~such party~~ shall notify the Owner~~other party~~ in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if Contractor~~a party~~ has failed to obtain required insurance, the Owner~~other party~~ may elect (but is in no way obligated) to obtain equivalent insurance to protect ~~such other party's~~Owner's interests at the expense of the Contactor~~party~~ who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

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6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; ~~and~~

5. include completed operations coverage:

a. Such insurance shall remain in effect for 10 years after Substantial Completion.

b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.

6. make the Contractor solely responsible for any insurance deductible or self-insured retention.

7. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

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5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: ~~Owner~~ Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor~~Owner~~ will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of ~~Owner's~~ Contractor's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner ~~(directly, if it is the purchaser of the builder's risk policy, or~~ through Contractor~~)~~ will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or

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damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or~~ Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Deleted in its entirety.~~Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~

1. Deleted in its entirety.~~Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~

C. Deleted in its entirety.~~The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

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6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, ~~exclsuing~~excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to ~~o~~Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall ~~constitue~~constitute a material breach of the Contract. If O~~o~~wner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing

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of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding ~~the~~ jobsite conduct.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons ~~canying~~carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other ~~sanitaiy~~sanitary facilities within the Owner's existing buildings or on-site facilities.

D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the

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performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

    a. in the exercise of reasonable judgment Engineer determines that the proposed item:

        1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

        2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

        3) has a proven record of performance and availability of responsive service; and

        4) is not objectionable to Owner.

    b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

        1) there will be no increase in cost to the Owner or increase in Contract Times; and

        2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

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C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

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2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:

1) all variations of the proposed substitute item from the item specified; and

2) available engineering, sales, maintenance, repair, and replacement services.

d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

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7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

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K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~

C. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~

7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a

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negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

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Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

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accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

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3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

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thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

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c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

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5. Any review and approval of a Shop Drawing or Sample submittal;
6. The issuance of a notice of acceptability by Engineer;
7. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner ~~and Engineer~~, and the Owner's officers, ~~directors, members, partners,~~ and employees, ~~agents, consultants and subcontractors of each and any of them,~~ from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection ~~but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable~~.

B. ~~In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~ The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity

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provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

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2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed

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without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or

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utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

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C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Deleted in its entirety.~~Evidence of Financial Arrangements~~*

A. Deleted in its entirety.~~Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).~~N/A

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

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10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.

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B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Emergency *Work Change Directives*

A. An Emergency Work Change Directive may only be used in emergency situations and will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ~~ordered or~~ documented by an Emergency Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Emergency Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

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B. If Owner has issued a written Emergency Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit ~~any Claim seeking such~~ a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

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B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs,

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Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a ~~decision~~ recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting

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data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and ~~Action~~ Recommendation on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend ~~approve~~approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon ~~Owner and~~ Contractor, unless ~~Owner or~~ Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety

A. Deleted in its entirety.~~*Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:~~

1. Deleted in its entirety.~~Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~

2. Deleted in its entirety.~~Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

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3. Deleted in its entirety.~~Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and~~

4. Deleted in its entirety.~~Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.~~

B. Deleted in its entirety.~~*Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.~~

C. Deleted in its entirety.~~*Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.~~

D. Deleted in its entirety.~~*Mediation*~~

1. ~~At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.~~

2. Deleted in its entirety.~~If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.~~

3. Deleted in its entirety.~~Owner and Contractor shall each pay one-half of the mediator's fees and costs.~~

E. Deleted in its entirety.~~*Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.~~

F. Deleted in its entirety.~~*Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal~~

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~~of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.~~

G. Deleted in its entirety.~~*Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.~~

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts

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will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors~~, attorneys, and accountants~~) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

        2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

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3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

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5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

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B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are ~~not guaranteed~~estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

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2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK~~[OLD ARTICLE 13]~~

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions

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in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right

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of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. ~~At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month),~~ Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

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2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor ~~within 10 days after the date on the Application for Payment is stamped as received by Engineer~~ indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall~~may~~ make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

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3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

    a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

    b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

    a. to supervise, direct, or control the Work;

    b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

    c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

    d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

    e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.

6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

    a. the Work is defective, requiring correction or replacement;

    b. the Contract Price has been reduced by Change Orders;

    c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

    d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

    e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

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D. *Payment Becomes Due*

1. ~~Ten days a~~Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer ~~will become due, and when due will be paid by Owner to Contractor~~.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

   a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

   b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

   c. Contractor has failed to provide and maintain required bonds or insurance;

   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

   e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

   f. The Work is defective, requiring correction or replacement;

   g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

   h. The Contract Price has been reduced by Change Orders;

   i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

   j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

   k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

   l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the

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specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Ppunch lList items to be completed or corrected before final payment. Substantial Completion cannot occur before the ~~Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows~~ Owner is able to begin to utilize the entire ~~Project~~Work for the purposes for which it was intended.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion ~~subject to Certificate of Occupancy (or Completion)~~. Engineer shall attach to the certificate a ppunch lList of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Ppunch lList. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised ppunch lList of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

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D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the Ppunch Llist of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ppPunch llList items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Ppunch llist.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

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15.05 *Final Inspection – Punch List*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) ~~insruance~~insurance;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

   e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights ~~arising out of the Work,~~ and ~~of~~ Liens filed in connection with the Work.

3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) ~~the releases and receipts include~~ all payrolls~~labor~~, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor ~~a Lien could be filed~~; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. ~~might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied.~~ If any

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Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25)~~30~~ days of the final Application for Payment being stamped as received by ~~Owner's receipt of the final Application for Payment from~~ Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; ~~or~~

4. Contractor's repeated disregard of the authority of Owner or Engineer~~.~~:

5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ~~10~~ 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within ~~7~~ 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

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Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. ~~Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order.~~ When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon ~~7~~ 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract

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and recover from Owner payment on the same terms as provided in Paragraph 16.03. Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Deleted in its entirety.~~Methods and Procedures~~*

A. Deleted in its entirety.~~Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:~~

1. Deleted in its entirety.~~A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~

2. Deleted in its entirety.~~Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

B. Deleted in its entirety.~~Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:~~

1. Deleted in its entirety.~~elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~

2. Deleted in its entirety.~~agree with the other party to submit the dispute to another dispute resolution process; or~~

3. Deleted in its entirety.~~if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-

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suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. *Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.*

3. *Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ___, but in no event after the expiration of the applicable statute of limitations.*

4. *The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.*

5. *Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.*

6. *In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.*

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

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otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the S~~s~~tate of Florida~~in which the Project is located~~.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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City of Port Orange

Community Development Block Grant Program (CDBG)

Operating & Procedures Manual

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Summary of the Community Development Block Grant (CDBG) Program:

This section summarizes the National Objectives, Eligible and Ineligible Activities, and citizen participation requirements of the CDBG program. For a more complete description, consult the Code of Federal Regulations, Title 24, Part 570.200(a)(2) and (3), 570.200-570.207, 570.506.

The primary objective of the Community Development Block Grant (CDBG) Program is the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate- income. Funds must be used to carry out activities that will meet one of the three National Objectives:

1. Benefit to low- and moderate- income persons
2. Prevention or elimination of slums or blight, or
3. Meet an urgent need

At least seventy percent (70%) of the total CDBG funds expended must be used for activities that benefit low- and moderate- income persons.

Basic Eligible Activities – 24 CFR 570.201

- Acquisition of Real Property – subject to limitations of 570.207
- Housing Rehabilitation – subject to 570.202
- Code Enforcement
- Public Facilities and Improvements – such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes
- Removal of Architectural Barriers – ADA Compliance/Handicap Access for public and/or private, qualifying projects
- Public Services – subject to 15% cap of total annual CDBG allocation
- Special Activities by Community-Based Development Organizations (CBDO) – 570.204
- Special Economic Development Activities – 570.203
- Relocation and Demolition

Basic Ineligible Activities – 24 CFR 570.207, 570.207(A), 570.201(e), 570.201(e)(1), (2), 570.203, 570.204, 570.209, 570.205, 570.206

- Buildings used for the general conduct of government
- General government expenses
- Political activities

The following activities may not be assisted unless certain criteria are met or they are carried out under the authority of 570.203 or 570.204:

- Purchase of construction equipment, purchase of furnishings and personal property, unless part of a public service activity or necessary for use by a grantee in the administration of the CDBG program

- Repair, operation, and maintenance of public facilities, improvements or services, except expenses associated with eligible public service activities, interim assistance, and office space for CDBG program staff
- New housing construction, except under the special provisions provided under 570.207(b)(3)(i)-(ii)
  Income payments of a subsistence nature

The City of Port Orange prioritizes: Affordable housing, Infrastructure, Facility Improvements, and Disaster recovery/relief

Citizen Participation Plan:

The City has completed a Citizen Participation Plan. This is located on the City's website at www.port-orange.org. A copy is also available in the City's Community Development office located on the second floor of City Hall at 1000 City Center Circle, Port Orange, Florida. This plan details the efforts to include and encourage public involvement in the development of the CDBG program.

Specifically, the City shall hold public meetings to solicit citizen views about community development needs.

How to Apply for CDBG funds:

The City of Port Orange practices an open process for selection of award of CDBG funding, unless otherwise noted in the Consolidated Plan/Action Plan. Projects will be considered based on eligibility of project, priority of project within the City's adopted Consolidated Plan and availability of funds left in the program as long as goals and objectives meet those in the Consolidated Plan/Action Plan. Program year begins October 1 and ends September 30.

If a proposed project meets a national objective and is considered an eligible activity, required information to be submitted must include:

1 Project Narrative/Description
2 Detailed pro-forma state and complete budget, including all operating expenses for the project (if applicable)
3 Articles of Incorporation (if applicable)
4 501(c)(3) documentation (if applicable)
5 List of Board of Directors (if applicable)
6 Authorization to request funds – documentation authorizing submission of request for funds. Must include copy of minutes in which this resolution or motion was recorded (if applicable)
7 Designation of Authorized Official (if applicable)
8 Organizational chart (if applicable)
9 Resume of Chief Program Administrator & Chief Fiscal Officer (if applicable)
10 Financial statement and audit (if applicable)
11 Conflict of Interest Certification (if applicable)
12 Documentation of compliance with national objective

Award Process:

Request for funding is reviewed to ensure project meets all requirements. Unless an RFP process is initiated, requests for funds are accepted on a first come first served basis and subject to fund availability.

In addition to meeting local and national goals, objectives, and eligibility criteria, a project's funding potential may be increased by demonstrating that the applicant has the ability to administer and complete the project; by showing how other forms of funding have been pursued and/or secured; and by exhibiting the project is not a duplication of service already provided in the area.

If determined eligible, a notification letter will be sent to the applicant (if other than an internal request for funding) with a commitment. Ineligible applications will receive notice as to why they did not qualify.

If funding is selected for an agency other than the City, applicant must sign a written contract with the City that details the agreements and requirements set forth in accordance with HUD, OMB and City regulations. In this instance, if the applicant is not awarded the full amount of the request, the scope of the project will be revised accordingly with approval from City staff. Funding cannot be awarded for expenditures made prior to a written contract.

If the applicant is creating affordable housing, a land use restriction agreement will be placed on the property to ensure affordability status at or below 80% of the area median income.

Mortgages may be required with some affordable housing projects.

City of Port Orange Procurement Statement:

All publicly funded procurement activities must be performed within the established policies and procedures of the City.

General guidelines

- . < $500.00 – No quotes required
- . $500 - $2,499.99 – Two verbal or written quotes required
- . $2,500 - $4,999.99 – Three verbal or written quotes required
- . $5,000 - $24,999.99 – Three written quotes required
- . $25,000+ - Formal sealed bids must be presented to City Council for approval

Credit Card Purchase limits:

- . 0-$1000 no quotes- (950 credit card limit)
- . $1000-$2499.00 two verbal or written quotes
- . $2499-$5000 three quotations - verbal or written – City Manager approval
- . $5000 - $24999 three written quotes required – City Manager
- . $25000 up formal bid threshold must be presented to City Council

Environmental Reviews:

Community Development Block Grant regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA). The Port Orange Community Development Block Grant Program must also determine whether a project meets other applicable statutory and regulatory requirements such as those of the Advisory Council on Historic Preservation and the Environmental Protection Agency.

General Responsibilities:

Federal regulations require that the City of Port Orange determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the ultimate effect of a proposed project, including the potential effects of both the CDBG and related project activities. For example, if CDBG funds are being used to extend a water line to a site for a new affordable housing project, then the ultimate effect of the project is not only the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the new housing project. The scope of an environmental review encompasses this definition of a project.

Subrecipient Requirements (if applicable):

If the City chooses to fund a subrecipient to carry out a CDBG-eligible project, the City may ask the subrecipient to assist in the development of the ERR by providing additional information, maps and site data. In some cases, project subrecipients may be asked to complete a biological assessment or gain project clearance from applicable state regulatory agencies.

Subrecipients shall comply with all terms and conditions of and shall implement all required mitigation measured identified in the environmental review record completed for their project. The subrecipient shall ensure that all activities related to their project including property acquisition, construction, and the use of the property/facilities are conducted in accordance with the project scope, as defined in the Environmental Review Record and with the conditions set out in it. The subrecipient shall also retain a copy of any required environmental data and CDBG Program's written notice to proceed in their project files.

CDBG Program Requirements:

The City of Port Orange will complete the Environmental Review Record. The time required for completion of the ERR can vary from weeks to months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment (BA) is necessary, the subrecipient (if any) will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid for from project funds.

After completing the Environmental Review Record, the City may publish a notice of a Finding of No Significant Impact (FONSI) in a local newspaper declaring intent to request release of project funds from HUD. After the release of funds from HUD, the City will send the subrecipient (if any) a contract with a written notice to begin the project. *No project activities or project costs may be incurred until receipt of the notice to proceed.*

Labor Standards:

All CDBG activities are subject to Federal labor standards requirements as identified in all contracts. The Federal labor requirements for which the CDBG program monitors are detailed in this section.

General Requirements:

The labor standards for construction contracts are set forth in four federal statutes (additional information regarding these federal regulations may be obtained by contacting the City's Community Development office or on the internet at www.hud.gov):

Section 110 of the Housing and Community Development Act of 1974, as amended (Title I): All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid at rates not less than those prevailing on similar constriction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This section also applies to the rehabilitation of residential property if property consists of eight or more units.

Davis-Bacon Act: All laborers or mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor; regardless of contractual relationship. Wages must be paid weekly.

Contract Work Hours and Safety Standards Act (for prime contracts over $100,000): The wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard work week of forty hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week.

No person employed on the job site shall be required to work in surroundings or any other working conditions which are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

Copeland Act (Anti-Kickback Law): Whoever by force, intimidation or threat of procuring dismissal from employment or by any other manner whatsoever, induces any persons employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under their contract of employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Monitoring/Enforcing Federal Labor Standards Provisions:

The City of Port Orange CDBG Program will be responsible for monitoring of contractor compliance with the Federal Labor Standards Provisions.

Use of Volunteers:

Volunteers on Community Development Block Grant projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing services to a grant recipient (local government or non-profit organization) without promise, expectation, or receipt of compensation and they are not otherwise employed, at any time, on the project. Federal rules at 24 CFR Part 70.3 cover the use of volunteers on CDBG assisted construction projects. If volunteers are going to be used on the project, the recipient must comply with the following reporting requirements:

- For projects that include paid construction workers, the recipient must record volunteers' names and hours volunteered; and

- For projects that will only use volunteers, recipients must record the number of volunteers and the number of hours worked, collectively.

Additional restrictions regarding use of volunteers on CDBG projects may be enforced by state or local statute, rule or practice.

Finance/Accounting:

This section addresses the financial and accounting aspects of the CDBG program. The following procedures are guidelines that should be adhered to in financial transactions to meet federal requirements.

General Requirements:

In accordance with OMB Circular A-100, A-128 or A-133, the City (and any/all subrecipients) must meet the audit requirements specified therein. Additionally, all financial transactions with CDBG monies are subject to federal audit. The City's CDBG program administrator will insure HUD form 60002, section 3 Summary Reports are filed in accordance with Federal guidelines 24CFR 570.607(b). The City's Finance Department will monitor compliance.

Project Budget:

The approved grant budget contained in the City's grant agreement with HUD identifies the activities determined to be eligible for reimbursement by the grant funds. Grant funds cannot be used for pre-agreement costs that are incurred before the grant contract is signed. The City's financial system for tracking CDBG should:

- Maintain the amounts budgeted for eligible activities in its accounting records
- Include both obligations/expenditures and unexpended/unobligated balances for each line item
- Periodically compare actual obligations and expenditures to-date against planned obligations and expenditures and against projected accomplishments for the grant project

Internal Controls:

Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records which create accountability in the financial management system and safeguard its cash, property, and assets. The internal controls must protect the integrity of the grant funds. At a minimum, the system should provide for adequate separation of duties so that no one person has authority over an entire financial transaction. One person should not have control over more than one of the following:

- Authorization to execute transaction
- Recording the transaction
- Custody of the assets involved in the transaction

Financial Reporting:

The City's financial system will generate regular reports that permit an observer to compare actual expenditures against the approved budget.

Other Financial System Requirements:

The City's financial system will be set up to satisfy an auditor conducting an audit. During an audit, the auditor will examine the records to ascertain if:

- Funds are properly budgeted and approved
- Budget revisions have been documented and approved

- Personnel changes are properly allocated to the block grant and based on payroll documents such as time and attendance records

- All expenditures can be traced to source documents (purchase orders, invoices, cancelled checks)
- Drawdowns have been timely
- Only allowable funds have been claimed on the project
- Property has been managed and inventoried properly
- In-kind costs and costs billed to other funds are clearly documented

Program Income:

Program income is defined as the gross income that has been directly generated from use of CDBG funds. Examples include:

- Gross income from the use or rental of real property that has been acquired, constructed, or improved with CDBG funds. Cost incidentals to the generation of the income are deducted from the gross income
- Interest earned on program income
- Funds collected through special assessments that are made against properties owned and occupied by non-low and moderate-income households where the assessments have been made to recover some or all of the CDBG portion of a public improvement
- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds where the disposition occurs within a five-year period after initial expenditure of the CDBG funds

Fair Housing/ADA:

The CDBG program triggers several additional federal requirements that affect CDBG projects. These requirements include:

1. Fair Housing
2. Handicap Accessibility
3. Lead Based Paint

General Requirements:

1) **Fair Housing Activities** The City, as well as any subrecipients, are responsible for taking necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. Further, the City and any subrecipients should strive to promote a strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including minorities and female-headed households. Possible actions the City, and any subrecipients, can take are as follows:

- Review zoning, building and housing codes and revise if necessary to encourage equal opportunity in housing
- Consider fair housing priorities when developing land use plans for public facilities and housing
- Develop or strengthen local fair housing laws, including enforcement powers and sanctions
- Require private developers and real estate agents to use HUD affirmative marketing and advertising practices

2) **Handicap Accessibility**

A) Americans with Disabilities Act: The Americans with Disabilities Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

B) Section 504 Handicap Accessibility Policy: Section 504 was enacted as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of handicap in all programs and activities receiving federal assistance and, in 1978, it was amended to apply to all programs conducted by the federal government. This regulation provides that no qualified individual with handicaps

shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity that receives federal financial assistance.

The City of Port Orange will provide sign interpreters for public meetings upon request for CDBG program accessibility. All public meeting sites are handicap accessible and auxiliary aids are available for those individuals requesting them. Structures built or rehabilitated must be made handicap accessible. Structures designed, built or altered (rehabilitated) with CDBG funds will conform to the Uniform Federally Accessibility Standards (UFAS), which was published in the Federal Register on August 7, 1984 (49 CFR 13518). The UFAS technical requirements meet or exceed comparable provisions of ANSI 117.1-1980 Specifications for Making Buildings and Facilities Accessible to, and Useable by Physically Handicapped People.

3) **Lead-Based Paint** (applies to residential housing projects/programs) The use of lead-based paint is prohibited. CDBG recipients must certify that no lead-based paint will be used in residential units assisted with CDBG funds and must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint.

The federal requirements pertaining to lead-based paint are contained in 24 CFR Part 35. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD. A copy may be obtained from the City of Port Orange.

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Article 1: Labor Standards

A. **Applicability.** The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

B. **Minimum Wages.** Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (**"Administrator"**). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis- Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid.
Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis- Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired, whether paper (Optional Form WH- 347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347.pdf or its successor site), or electronically pursuant to Program Obligations. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or

supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

program, but who has been certified by the Office of Apprenticeship, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

7. **Contract termination and debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., “Federal Housing Administration transactions”, provides in part: “Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both.”

C. Contract Work Hours and Safety Standards Act.

1. **Applicability and Definitions.** This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than $100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. **Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to

race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non- metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than $100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR

Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

End of HUD Provisions

[Remainder of this page left intentionally blank]

EJCDC Exhibit No. ___
ITB 25-12
General Decision Number FL20250232 03/14/2025Davis-Bacon Wage Determination

Consisting of 6 pages

"General Decision Number: FL20250232 03/14/2025

Superseded General Decision Number: FL20240232

State: Florida

Construction Type: Building

Counties: Flagler and Volusia Counties in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	01/24/2025

2 01/31/2025
3 03/14/2025

ASBE0067-003 01/01/2021

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 30.12	13.11

ELEC0756-005 09/02/2024

	Rates	Fringes
ELECTRICIAN	$ 28.42	3%+13.10

* ELEV0139-002 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC	$ 53.73	38.435+a+b

FOOTNOTE:
A. Employer contributions 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; Employer contributions 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

B. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; The Friday after Thanksgiving Day; and Christmas Day.

ENGI0487-022 07/01/2016

	Rates	Fringes
OPERATOR: Forklift	$ 23.25	9.20
OPERATOR: Mechanic	$ 32.05	9.20
OPERATOR: Oiler	$ 23.50	9.20

ENGI0673-016 05/01/2024

	Rates	Fringes
OPERATOR: Crane		
Gantry Crane; Bridge Crane	$ 36.00	15.10
Tower Crane; Crawler Crane; Truck Crane; Hydro Crane	$ 36.00	15.10

IRON0402-001 10/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 28.90	15.66

PLUM0295-002 01/01/2025

	Rates	Fringes
PLUMBER	$ 41.60	22.68

PLUM0295-005 01/01/2025

	Rates	Fringes
HVAC MECHANIC (Includes Pipe and Unit Installation)	$ 33.90	15.15

SFFL0821-004 01/01/2025

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 34.03	23.70

SHEE0015-006 07/01/2023

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation)	$ 25.75	16.92

* SUFL2014-041 08/16/2016

	Rates	Fringes
CARPENTER	$ 17.92	0.00
CEMENT MASON/CONCRETE FINISHER	$ 19.00	0.00
IRONWORKER, REINFORCING	$ 22.81	11.58
IRONWORKER, STRUCTURAL	$ 21.87	0.00
LABORER: Common or General	$ 11.61 **	0.00
LABORER: Mason Tender - Cement/Concrete	$ 12.00 **	0.00
LABORER: Pipelayer	$ 15.00 **	0.54
OPERATOR: Backhoe/Excavator/Trackhoe	$ 17.80	2.81
OPERATOR: Bulldozer	$ 15.40 **	1.90
OPERATOR: Grader/Blade	$ 18.97	0.00
OPERATOR: Loader	$ 16.30 **	0.00
OPERATOR: Roller	$ 14.43 **	4.78
PAINTER: Brush, Roller and Spray	$ 13.54 **	0.00
PIPEFITTER, Excludes HVAC Pipe and Unit Installation	$ 23.16	10.34
ROOFER	$ 16.59 **	0.00
TILE SETTER	$ 17.25 **	1.74
TRUCK DRIVER: Dump Truck	$ 12.95 **	2.28
TRUCK DRIVER: Lowboy Truck	$ 14.24 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

==========

END OF GENERAL DECISION"

End of Solicitation Documents

CITY OF PORT ORANGE
PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM # 1
April 16, 2025

ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated March 28, 2025 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting a bid and acknowledge such in the bid documents.

A. CHANGES TO THE ITB:

SURVEY DRAWINGS are hereby added to and now part of Attachment 3 Construction Drawings. SURVEY DRAWINGS are posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at https://www.port-orange.org/bids.aspx.

The following language is hereby added to **Section 6 – Special Requirements/Instructions:**
LIQUIDATED DAMAGES
Contractor shall pay Owner $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified for Substantial Completion (375 days), until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

B. CLARIFICATIONS

None

C. QUESTIONS AND ANSWERS

Question #1: Attachment 3 Construction Drawings – Can you please provide the missing Survey Drawings 1 thru 4?
ANSWER: There are three drawings on the separately posted document titled SURVEY DRAWINGS. Please refer to **A. CHANGES TO THE ITB** of this addendum. SURVEY DRAWINGS are posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at https://www.port-orange.org/bids.aspx.

Question #2: The documents indicate $0.00 liquidated damages. Please confirm, does the project have liquidated damages?
ANSWER: Contractor shall pay Owner $750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified for Substantial Completion (375 days), until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to

complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $750.00 for each day that expires after such time until the Work is completed and ready for final payment.

In all other respects, except as specifically stated herein, the subject ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer
jcastro@port-orange.org

City of Port Orange
Causeway Parking Lot & Boat Ramp Improvement

City Council Presentation

May 20, 2025

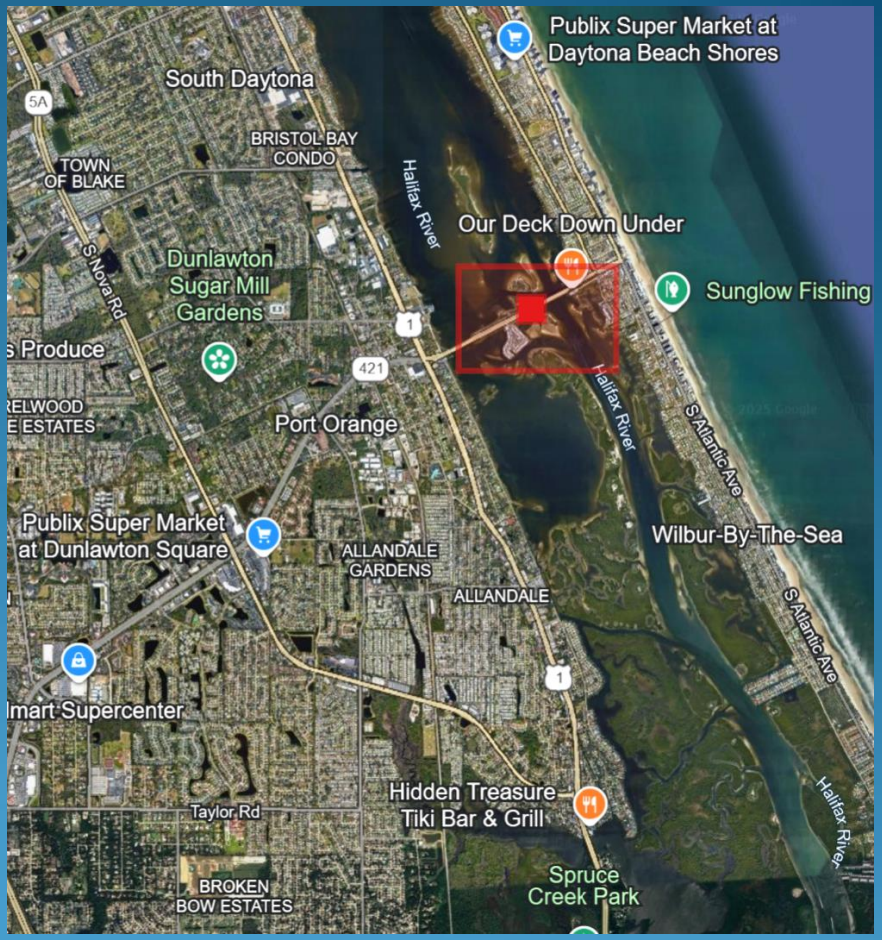
Dredging & Marine Consultants, LLC
4643 S. Clyde Morris Blvd., Unit 302
Port Orange, FL 32129

(386) 304-6505
spatel@dmces.com

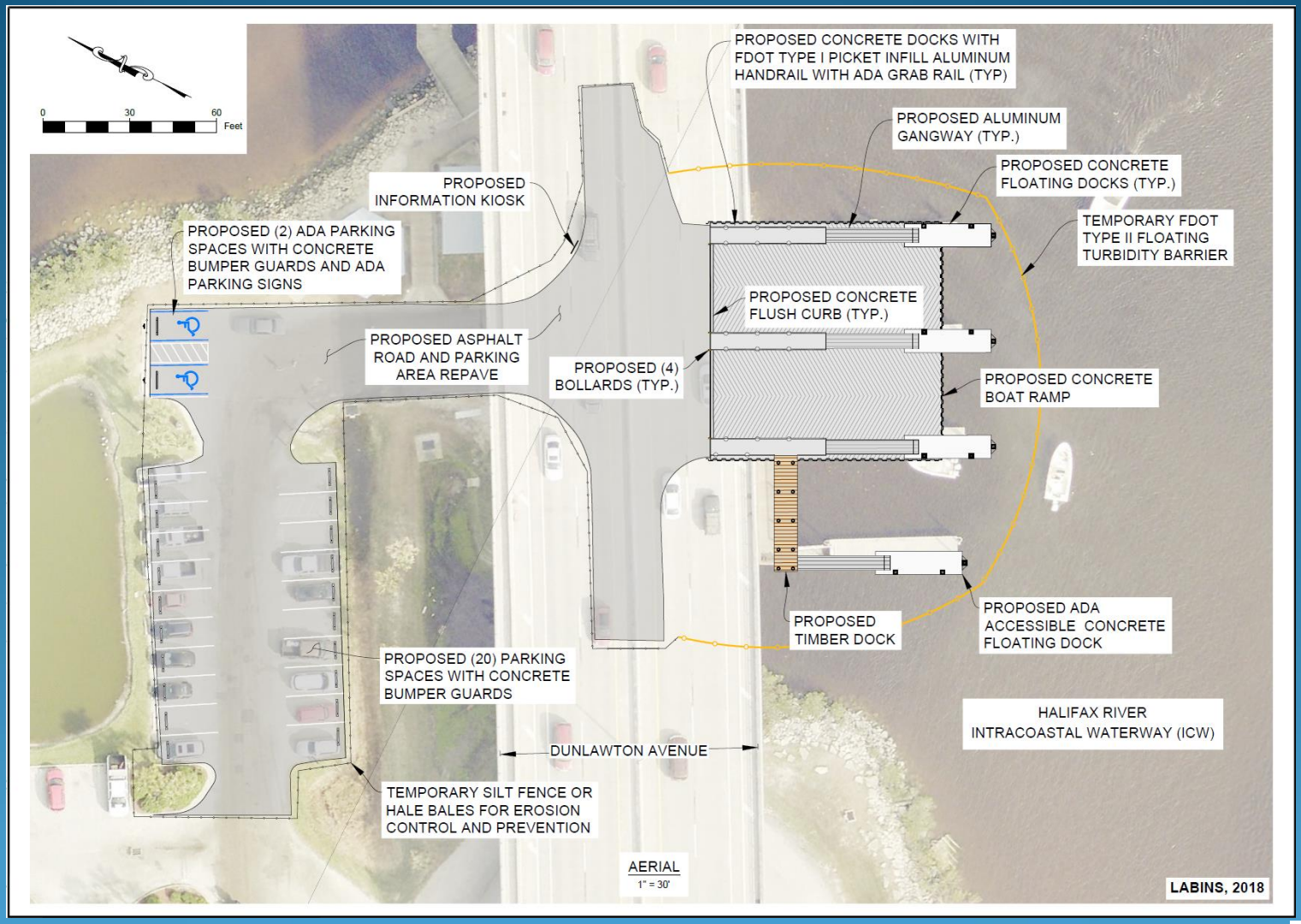
Project Description & Location

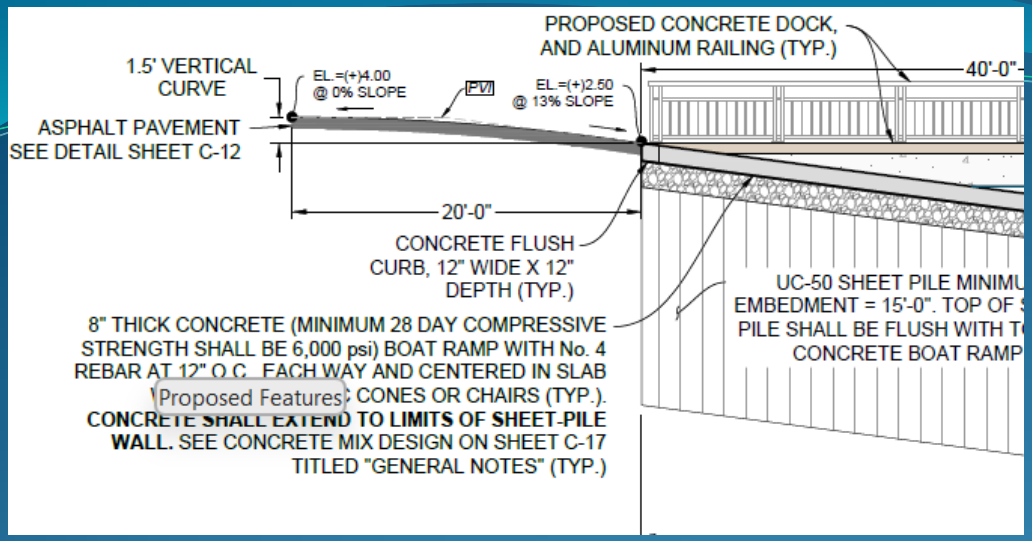
The **Causeway Park Boat Ramp & Parking Lot Improvements** project aims to enhance public access, safety, and functionality Port Orange Boat Ramp. The project includes:

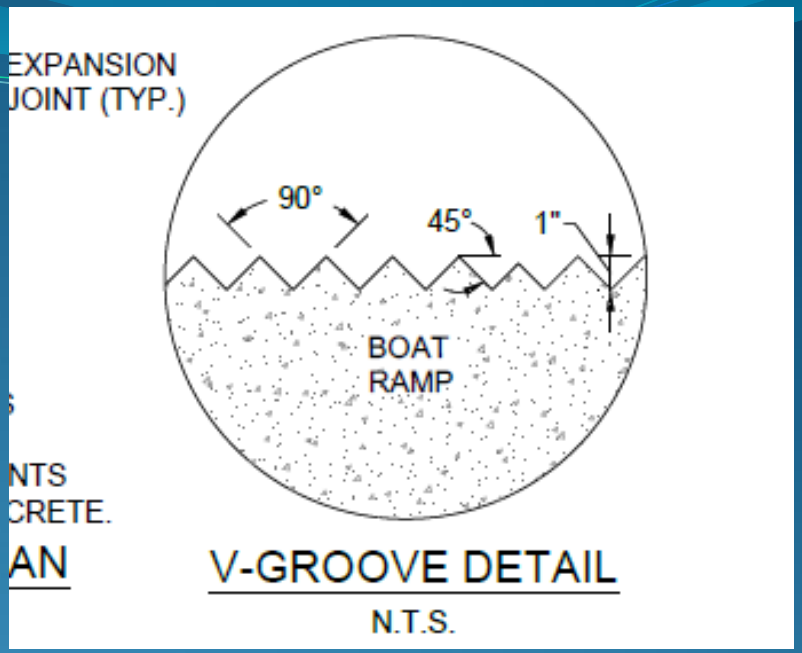
- Located under the Dunlawton Avenue Causeway in Port Orange
- Reconstruction of the concrete boat ramp for improved traction and ADA accessibility
- New concrete, timber, and ADA-compliant floating docks and gangways
- Resurfacing of parking area with 22 spaces, including ADA parking
- Safety upgrades: handrails, flush curbs, bollards, and signage
- During Construction Environmental Protection: turbidity barriers, erosion control, and mangrove preservation

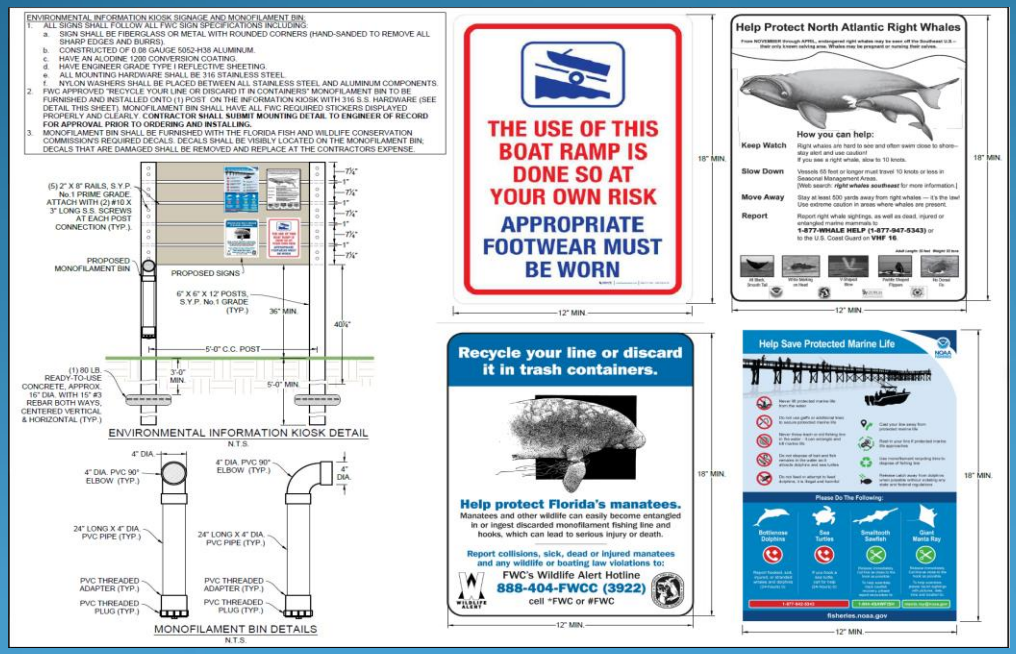


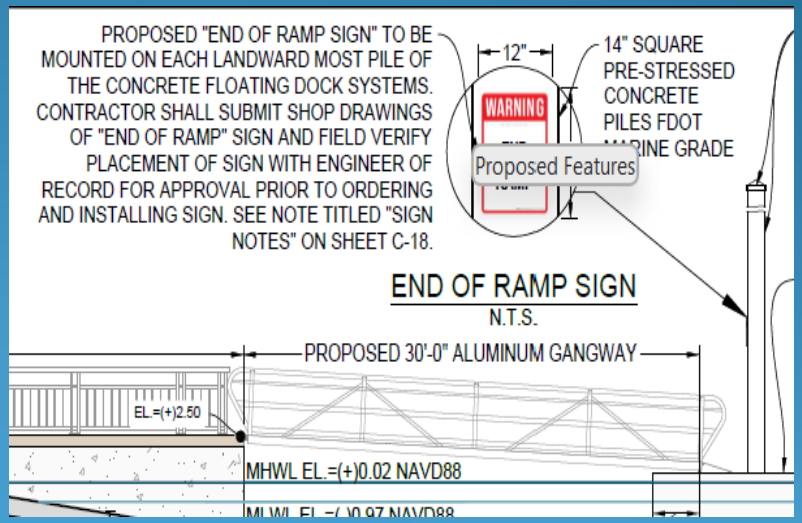
Proposed Features







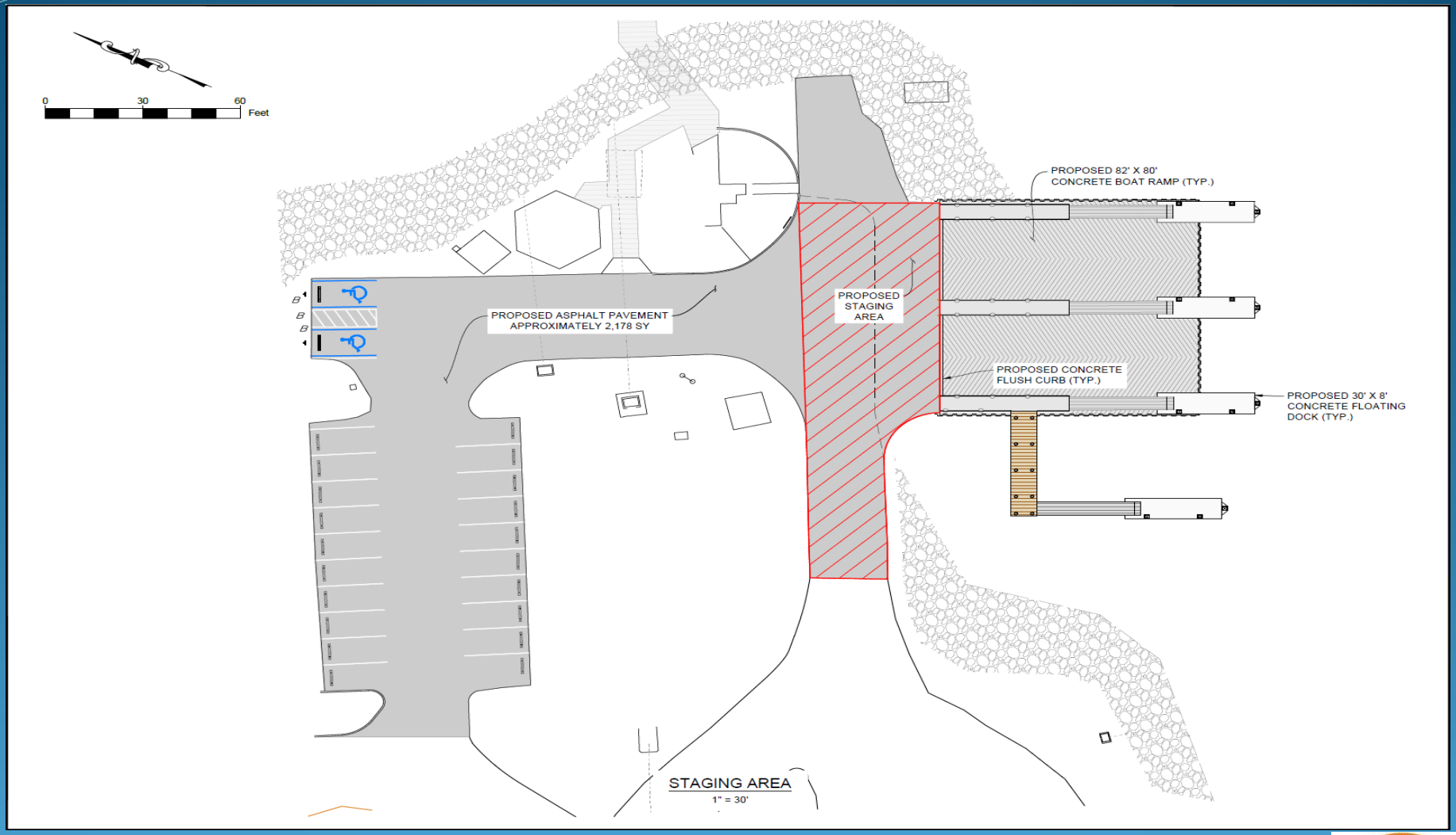




DMC

CITY OF PORT ORANGE 1867 FLORIDA

Proposed Laydown/Staging Area



Proposed Improvements













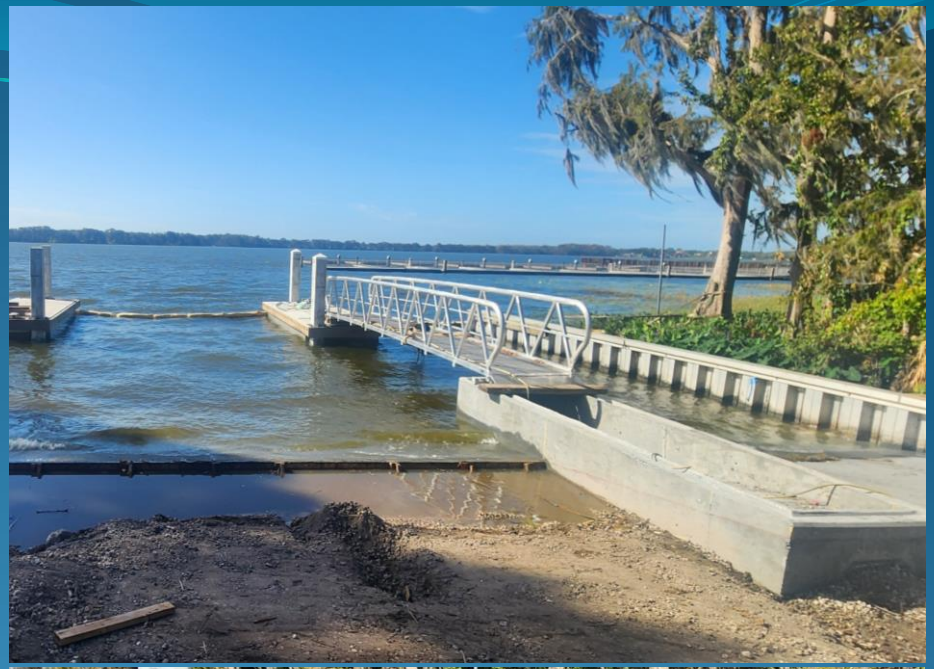


Existing & Proposed

DMC

CITY OF PORT ORANGE 1867 FLORIDA







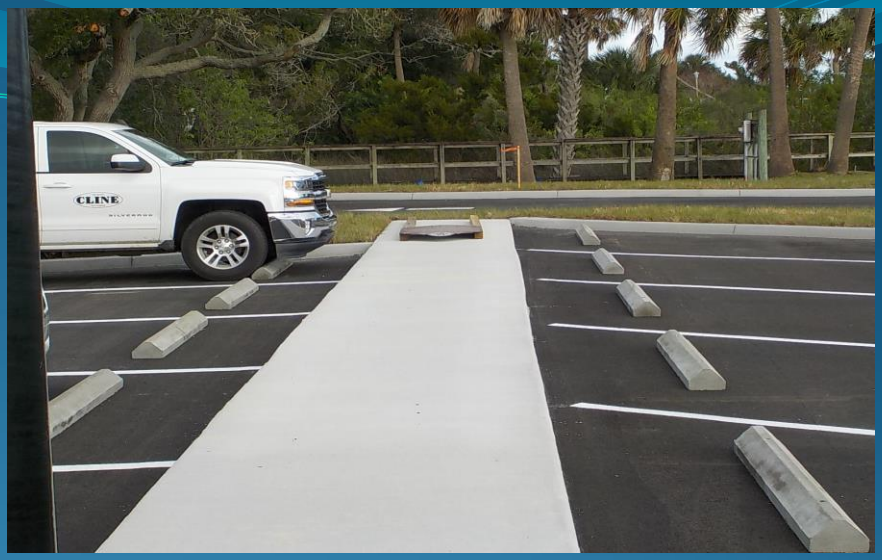


Existing & Proposed

DMC

CITY OF PORT ORANGE 1867 FLORIDA







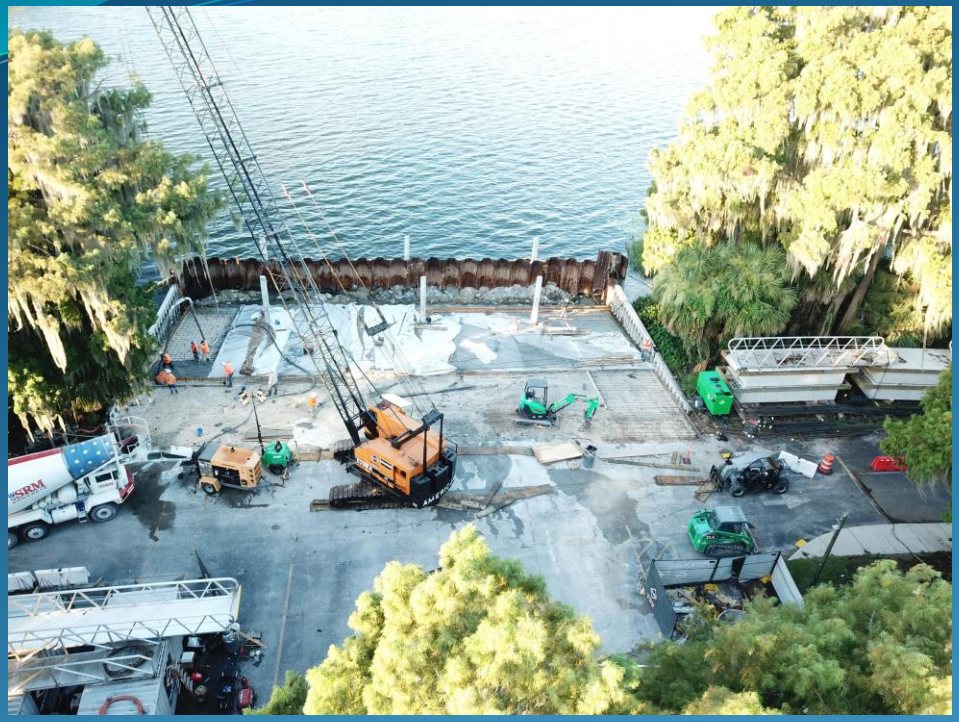


Existing & Proposed

DMC

CITY OF PORT ORANGE 1867 FLORIDA

Dewatering & Boat Ramp Construction









DMC

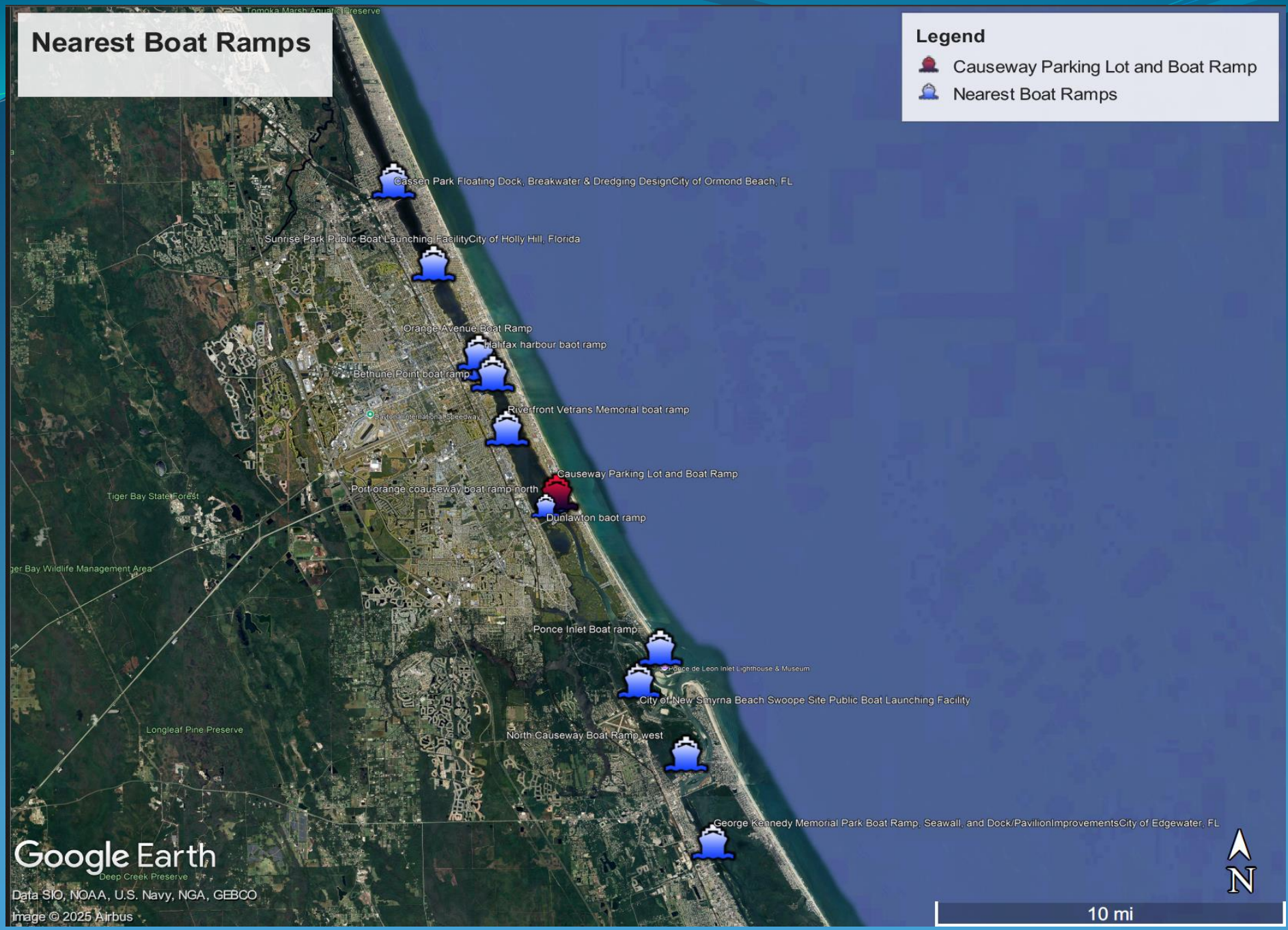
CITY OF PORT ORANGE 1867 FLORIDA

Existing Conditions



Conceptual Rendering




Nearest Boat Ramps
Legend
Causeway Parking Lot and Boat Ramp
Nearest Boat Ramps
Tomoka Marsh Aquatic Preserve
Cassen Park Floating Dock, Breakwater & Dredging DesignCity of Ormond Beach, FL
Sunrise Park Public Boat Launching FacilityCity of Holly Hill, Florida
Orange Avenue Boat Ramp
Halifax harbour baot ramp
Bethune Point boat ramp
Daytona International Speedway
Riverfront Vetrans Memorial boat ramp
Causeway Parking Lot and Boat Ramp
Port orange coauseway boat ramp north
Dunlawton baot ramp
Tiger Bay State Forest
ger Bay Wildlife Management Area
Ponce Inlet Boat ramp
Ponce de Leon Inlet Lighthouse & Museum
City of New Smyrna Beach Swoope Site Public Boat Launching Facility
Longleaf Pine Preserve
North Causeway Boat Ramp west
George Kennedy Memorial Park Boat Ramp, Seawall, and Dock/PavilionImprovementsCity of Edgewater, FL
Deep Creek Preserve
Google Earth
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image © 2025 Airbus
N
10 mi

Near by Boat Ramps to the project location

#	Boat Ramp Name	Location	Distance
1	Dunlawton Boat Ramp	Port Orange	0.5 miles
2	Riverfront Veterans Memorial Boat Ramp	South Daytona	2.5 miles
3	Bethune Point Boat Ramp	Daytona Beach	5 miles
4	Halifax Harbor Boat Ramp	Daytona Beach	5.5 miles
5	Orange Avenue Boat Ramp	Daytona Beach	6 miles
6	Sunrise Park Public Boat Launching Facility	Holly Hill	7 miles
7	Cassen Park Floating Dock	Ormond Beach	9 miles
8	Ponce Inlet Boat Ramp	Ponce Inlet	10 miles
9	Swoope Site Public Boat Launching Facility	New Smyrna Beach	12 miles
10	North Causeway Boat Ramp	New Smyrna Beach	13 miles
11	George Kennedy Memorial Park Boat Ramp	Edgewater	15 miles

DMC

CITY OF PORT ORANGE 1867 FLORIDA

Estimated Schedule

Months from NTP	1	2	3	4	5	6	7	8	9	10	11	12
Mobilization/BMPs												
Install Temp Sheet Pile Coffercell												
Dewatering												
Demolition of Existing Boat Ramp												
Composite Sheet Pile Installation												
Concrete Pile Installation												
Fixed Concrete Docks												
Pour Back New Boat Ramp												
Remove Temp Sheet Pile Coffercell												
Install Floating Docks												
Install Gangways												
Demolition of existing Asphalt road & Parking area												
New Asphalt road & Parking area & stripping.												
Information Kiosk & ADA Parking Signs												
Cleanup and Punchlist												
Demobilization												
Substantial & Final Completion												

Note: 4-6 months for floating docks manufacturing & delivery.

DMC

CITY OF PORT ORANGE 1867 FLORIDA



Detail by Entity Name

Florida Profit Corporation
EAST COAST MARINE CONSTRUCTION & DESIGN, INC.

Filing Information

Document Number	P18000014904
FEI/EIN Number	82-4168719
Date Filed	02/13/2018
State	FL
Status	ACTIVE

Principal Address

150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Changed: 04/21/2020

Mailing Address

150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Changed: 04/21/2020

Registered Agent Name & Address

ZEMBALL, JOHN
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Address Changed: 04/21/2020

Officer/Director Detail

Name & Address

Title PRESIDENT

ZEMBALL, JOHN
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Title VP

Fletcher, Michael
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Annual Reports

Report Year	Filed Date
2023	02/23/2023
2024	04/04/2024
2025	02/12/2025

Document Images

02/12/2025 -- ANNUAL REPORT	View image in PDF format
04/04/2024 -- ANNUAL REPORT	View image in PDF format
02/23/2023 -- ANNUAL REPORT	View image in PDF format
03/08/2022 -- ANNUAL REPORT	View image in PDF format
02/18/2021 -- ANNUAL REPORT	View image in PDF format
04/21/2020 -- ANNUAL REPORT	View image in PDF format
03/27/2019 -- ANNUAL REPORT	View image in PDF format
02/13/2018 -- Domestic Profit	View image in PDF format

2025 FLORIDA PROFIT CORPORATION ANNUAL REPORT

FILED
Feb 12, 2025
Secretary of State
3583074883CC

DOCUMENT# P18000014904

Entity Name: EAST COAST MARINE CONSTRUCTION & DESIGN, INC.

Current Principal Place of Business:

150 S. PALMETTO AVENUE
SUITE 201
DAYTONA BEACH, FL 32114

Current Mailing Address:

150 S. PALMETTO AVENUE
SUITE 201
DAYTONA BEACH, FL 32114 US

FEI Number: 82-4168719

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

ZEMBALL, JOHN
150 S. PALMETTO AVENUE
SUITE 201
DAYTONA BEACH, FL 32114 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Officer/Director Detail :

Title	PRESIDENT	Title	VP
Name	ZEMBALL, JOHN	Name	FLETCHER, MICHAEL
Address	150 S. PALMETTO AVENUE SUITE 201	Address	150 S. PALMETTO AVENUE SUITE 201
City-State-Zip:	DAYTONA BEACH FL 32114	City-State-Zip:	DAYTONA BEACH FL 32114

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: JOHN ZEMBALL PRES 02/12/2025

Electronic Signature of Signing Officer/Director Detail — Date

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

___ Form 7.2 – Bidder's Acknowledgement

___ Form 7.3 – Addendum and Change Order Procedure Acknowledgement

___ Form 7.4 – Drug Free Preference Statement

___ Form 7.5 – Public Entity Crimes Statement

___ Form 7.6 – Anti-Collusion

___ Form 7.7 – Statement of Bidder's Qualifications

___ Form 7.8 – Professional References for Previous Experience

___ Form 7.9 – List of Subcontractors

___ Form 7.10 – Scrutinized Companies Certification

___ Form 7.11 – E-Verify Affidavit

___ Form 7.12 – Debarment, Suspension and Other Responsibility Matters

___ Form 7.13 – Affidavit of Compliance With F.S. 287.138

___ Form 7.14 – No Submittal Response

___ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING

___ (Attachment 1) – Schedule of Unit Pricing

___ Current Bonding Capacity Letter (as outlined in Section 6)

___ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)

___ Current Tax Receipt of Bidder's municipality

___ Original Bid Bond or certified check or bank draft (as outlined in Section 6)

___ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: John Zemball / President

East Coast Marine Construction & Design
Name of Business

Authorized Signature

4/28/25
Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the Bidder/Contractor as its act and deed and that the Bidder/Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this bid is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a bid for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Bidder interested in said ITB; and that the undersigned executed this Bidder's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for the contract under which services will be performed, does hereby propose to furnish all labor, equipment and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☒I take NO exceptions. ☐Exceptions (list below; add additional pages if necessary):

_____

_____

East Coast Marine Construction & Design
Name of Business

Authorized Signature

John Zemball / President
Printed Name and Title

82-4168719
Federal Identification No.

150 S. Palmetto Ave. Suite 201
Mailing Address

Daytona Beach, Fl. 32114
City, State & Zip Code

386-777-7440
Telephone Number

john@eastcoastmarineconstruction.com
E-mail Address

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

I acknowledge receipt and incorporation of the following addenda and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum# 1 Date: 4/16/25 Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

East Coast Marine Construction & Design
Name of Business

Authorized Signature

John Zemball / President
Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒ is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

East Coast Marine Construction & Design
Name of Business

Authorized Signature

John Zemball / President
Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

(To be signed in the presence of a notary public or other authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant John Zemball, who, being by me first duly sworn, made the following statement:

1. The business address of 150 S. Palmetto Ave. Suite 201 (name of Offeror or business) is East Coast Marine Construction & Design.
2. My relationship to John Zemball (name of Offeror or business) is President (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____. A copy of the order of the Division Administrative Hearing is attached.~~

(Draw a line through paragraph 7 if paragraph 6 above applies)

East Coast Marine Construction & Design
Name of Business

Authorized Signature

John Zemball / President
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 2nd day of April, 2025, by John W. Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.6 – ANTI-COLLUSION

By signing this form, the Bidder agrees that this bid is made without any other understanding, agreement or connection with any person, corporation or firm submitting a bid for the same purpose and that the bid is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISION, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE BIDDERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: East Coast Marine Construction & Design

SIGNED BY: _____

(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: John Zemball

TITLE: President

ADDRESS: 150 S. Palmetto Ave. Suite 201

CITY, STATE AND ZIP CODE: Daytona Beach, Fl. 32114

TELEPHONE: 386-777-7440

F.E.I.N.: 82-4168719

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Bidder: East Coast Marine Construction & Design

B. Permanent main office address: 150 S. Palmetto Ave. Suite 201. Daytona Beach, Fl. 32114

C. Date organized: 2018

D. If a corporation, where incorporated: Florida, Volusia County

E. How many years have you been engaged in the business under your present firm or trade name? 7

F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

G. General character of work performed by your company: Marine Construction

H. Have you ever failed to complete any work awarded to you? If so, where and why? No

I. Have you ever defaulted on a contract? If so, where and why? No

J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

K. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL**

L. Credit currently available: $ 25,000.00

M. Give bank name, contact name and phone number: Truist Bank, Sarah Hill, 386-233-3384. sarah.hill@truist.com

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒Yes ☐No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals compromising the Statement of Bidder's Qualifications.

East Coast Marine Construction & Design
Name of Business

Authorized Signature

John Zemball / President
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 25th day of April, 2025, by John Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

East Coast Marine Construction & Design

Work-on-Hand As Of: 2/26/25

CONTRACT DESCRIPTION	CONTRACT PRICE	TOTAL BILLED TO-DATE	TOTAL COST TO-DATE	COST TO COMPLETE	Start Date	Completion Date
24-158 2121 S. Palmetto Ave	$ 144,541.00	$ 28,308.20	$ 4,300.00	$ 104,105.75	4/1/2025	5/1/2025
24-172 4876 Halifax Dr.	$ 15,822.80	$ 3,164.56	$ 10,867.10	$ 1,000.00	2/10/2025	2/28/2025
24-87 Hillsborough St. ADA Beach Access	$ 336,565.52	$ 6,048.00	$ 6,048.00	$ 246,376.14	4/14/2025	5/30/2025
24-89 Briggs Dr. Riverfront Pier	$ 132,148.67	$ 11,313.11	$ 8,313.13	$ 90,798.37	4/1/2025	5/1/2025
24-111 Ferran Park Seawall Repair	$ 723,450.80	$ 86,373.00	$ 44,779.75	$ 461,635.81	2/24/2025	5/1/2025
24-166 3812 Emelia	$ 82,718.16	$ 16,543.63	$ 3,000.00	$ 59,038.62	6/1/2025	7/1/2025
24-175 Andy Romano Park	$ 2,136,309.00	$ -	$ -	$ 1,602,231.75	10/31/2025	1/31/2026
24-186 Dimucci Twin Towers	$ 157,519.25	$ 31,503.85	$ 3,000.00	$ 115,139.44	3/15/2025	5/1/2025
25-116 4727 Van Kleeck	$ 25,572.20	$ 7,680.00	$ 2,500.00	$ 16,679.15	3/19/2025	4/1/2025

East Coast Marine Construction & Design

Company owned equipment

A Fleet of work trucks.

12’x 120’ work barge with 4-ton crane

12’ x 28’ push boat

185 air compressors

Plate Compactors

Vibratory Hammers

Drop Hammers

Generators

Jet pumps

Rental Equipment to be utilized for the Causeway Boat Ramp Project

35x120 spud barge – supplied by Mobro Marine

5299 Crawler Crane- supplied by Mobro Marine

Vibratory Hammer- Supplied by ICE

Pile Master Air Hammer- Supplied by ECA

CAT 350 Excavator- Supplied by United Rentals

Steel Sheet Pile (cofferdam)- Supplied by Meever

FORM 7.7. L

East Coast Marine Construction & Design

Experience and Background of Principal members

Owner: John Zemball. (see attached resume)

Vice President: Michael Fletcher (see attached resume)

Project Manager: Peter Kolb (see attached resume)

Superintendent: Joe Tennant.

Joe has over 35 years' experience in the marine construction industry. Joe has been with ECMCD for 2 years as acting field superintendent. At ECMCD, Joe has supervised installation of seawalls and large dock structures. Prior to ECMCD, Joe worked as a superintendent for Poseidon Dredge & Marine in West Palm Beach. At Poseidon, Joe supervised Marina Installations, Boat Ramp installations, Seawall Installations, dredging projects, Island building projects, and heavy lift crane operations. Prior to Poseidon, Joe worked with Mohawk Marine Industries in New England servicing the Groton Naval Base and large commercial enterprises installing large breakwaters and marinas.

Pile Driving Foreman: Justin Bruner.

Justin has been working with ECMCD for 3 years. Justin has overseen pile driving operations for installing seawalls and dock structures. Prior to ECMCD, Justing worked as a pile driver for Poseidon Dredge & Marine in West Palm Beach for 5 years.



CIVIL ENGINEER / SPECIALITY

JOHN ZEMBALL, PE

ZAHN ENGINEERING

Mr. Zemball's experience over the past 10 years has encompassed a wide variety of engineering specialty areas, including stormwater, water and wastewater collection and transmission system design and permitting, site planning and design, zoning, and construction and project management. He is responsible for planning, design, permitting and construction management for commercial and industrial sites, with a concentration on residential subdivision design. As part of the above projects, he has prepared plans for road design, sanitary sewer collection systems, water distribution systems and stormwater management systems. Other responsibilities have included presentation to planning and zoning boards.

Years of Experience: 10

Degrees

Bachelor of Science in Civil Engineering, University of Florida

Licenses/Certifications

Professional Registration in Florida, P.E. No. 82269; 2016

205 N Oceanshore Blvd., 3 Story Mixed Use Building, Flagler Beach, FL. *EHF INVESTMENT PROPERTIES LLC C/O Elias Habbabeh.* Project Manager. This project involved the design and permitting of a 3 story mixed use building featuring 2,653 sf of retail space, 3,256 sf of 3 multifamily vacation rental units and 3,329 sf penthouse residential space along with the associated parking, stormwater and utility connections to support the use. Permits required for development approval include; FDEP CCCL Permit, FDEP Wastewater Permit, FDEP Potable Water Permit, FDOT Drainage Connection Permit, FDOT General Use Permit for use of the R/W and a City of Flagler Beach Final Site Plan Approval. John managed every aspect of site design and permitting for this project.

Callalisa Creek Vistas, New Smyrna Beach, FL. *Stewart Mitchell.* Project Manager. This project is Phase 2 of the Hog Eye Camp Road PUD, which was also processed through Zahn Engineering, Inc. Phase 2 of this project included the design and permitting of 23 single family residential lots with the associated infrastructure and stormwater system. Our firm was responsible for design, permitting, City of New Smyrna Beach and St. Johns River Water Management District Approval. John was also responsible for the construction management for this development.

Pineland Subdivision, Ormond Beach, FL. *Fred Share.* Project Manager. Design and permitting of 192 single family residential lots located in Ormond Beach, FL. Project involved a complex interconnected PONDS stormwater model to analyze the interaction with the proposed development and the extensive wetland conveyance through the project. Zahn Engineering was responsible for the design and permitting; neighborhood meetings; rezoning; Development Agreement.

Pineland Subdivision – Construction Phase, Ormond Beach, FL. *DR Horton.* Construction Management. Zahn Engineering, Inc. was hired by DR Horton to provide construction management and contract administration services for the site work construction of this 192 lot subdivision. John's responsibilities include write construction schedule, estimate construction budget, review subcontractor bids and qualifications, review and approve shop drawings, attend regular progress meetings on site, review and approve pay applications.

General Contractor

JOHN ZEMBALL, CGC

Since receiving his general contractor license in June, 2018, John has had the pleasure of completing hundreds of projects from design to completion. Projects are primarily marine construction consisting of docks and seawalls. His experience includes projects ranging from large oceanfront seawalls to docks and boathouses of all shapes and sizes. His experience in the construction field is greatly enhanced by his work as an engineer and work as a Project Manager on commercial construction.

Years of Experience: 6

Degrees

Bachelor of Science in Civil Engineering, University of Florida

Licenses/Certifications

Construction Industries Licensing Board, Florida, CGC 1526550; 2018

2433 S. Atlantic Ave. Daytona Beach, FL.

Project Budget: $110,000.00

Seven Seas Resort

Phase 1: Coordinated the installation of (2) C-Inlets and 61’ of 12” ADS Perforated Sock Pipe, ensuring effective drainage solutions for the project area. Managed the procurement of associated Survey/As-builts to maintain accurate documentation of infrastructure installations.

Phase 2: Oversaw the installation of (3) C-Inlets and 80’ of 12” ADS Perforated Sock Pipe, further enhancing drainage capabilities for the site. Facilitated the procurement of Survey/As-builts to document infrastructure additions and improvements accurately.

Phase 3: Led the construction of an 18 LF steel-reinforced, concrete-filled cell block wall and footer, providing structural support and aesthetic enhancement. Managed the preparation for paving, including the removal of 50CY of sand, grading a 1,367 sf area, and conducting density testing to ensure proper foundation quality. Directed the import and installation of 53 CY of crushed concrete road base, followed by density testing to meet industry standards. Coordinated the installation of 1,367 sf of SP-9.5 asphalt, ensuring a smooth and durable surface for vehicular traffic. Oversaw the striping of new asphalt, adhering to safety and regulatory guidelines for road markings.

345 Otter Blvd. New Smyrna Beach, FL.

Project Budget: $268,000.00

Turnbull Creek Watershed Observation Deck

Led the planning and construction of an observation deck adjacent to the City of New Smyrna Beach paved multi-use trail. Managed the construction of a 12’ x 40’ deck with a 12’ x 12’ covered area and an ADA accessible walkway connecting to the multi-use trail, ensuring compliance with accessibility standards. Coordinated wetland mitigation efforts as per regulatory requirements to minimize environmental impact. Collaborated with the New Smyrna Beach Airport and FAA protocols due to the project's proximity to the airport, ensuring adherence to safety and regulatory guidelines. Worked closely with city officials, airport staff, and FAA representatives to address construction equipment usage and logistical considerations throughout the project duration. Implemented effective

communication strategies to facilitate collaboration among stakeholders and ensure project milestones were met on time and within budget. Maintained detailed documentation of project progress, regulatory approvals, and compliance measures for reporting and auditing purposes.

2403 S. Atlantic Ave. Daytona Beach, FL.

Project Budget: $2,153,000.00

St. Maarten Condominiums

Obtained necessary permits for the construction of a seawall at 2403 S. Atlantic Ave., ensuring regulatory compliance throughout the project. Managed the demolition, removal, and proper disposal of a failed seawall and associated debris in accordance with environmental guidelines. Oversaw the construction of a permanent seawall based on plans provided by LAV Engineering. Utilized 490LF of FRP Composite sheet piles as per plan specifications for enhanced durability and structural integrity. Constructed a 26" x 26" steel-reinforced concrete seawall cap with an embedded helical anchor tie-back system for added stability. Implemented 4" jet filter one-way weep holes at 10' O.C. for effective drainage and erosion prevention. Managed the importation and hydraulic compaction of beach-compatible sand in 24" lifts, totaling 4,224 tons for solid ground support.
Managed the North corner drainage system replacement, overseeing the installation of 360 LF of 36" N12 HDPE Perforated pipe along with associated corners and 57 stone installation for structural reinforcement. Directed the East drainage repair, coordinating the installation of 125 LF of 36" HDPE perforated pipe with 57 stone placement for improved drainage and stability. Implemented filter fabric wrapping for pipes and stones, enhancing their longevity and performance. Ensured compliance with safety standards and quality control measures throughout the procurement and installation processes.
Collaborated with project teams to optimize resource utilization and meet project deadlines efficiently.
Maintained accurate records of material inventory, equipment usage, and labor hours for project tracking and cost analysis.
Directed site restoration efforts, including the installation of 25,900SF of sod (St. Augustine/Floritam) for a revitalized landscape.

2301 S. Atlantic Ave. Daytona Beach, FL.

Project Budget: $2,200,000.00

Hawaiian Inn Condo/Hotel

Successfully managed the demolition and removal of a failed seawall on the north and south sides of the property. Oversaw the installation of approximately 680LF of NZ-14 coated steel sheet piles with a minimum embedment of 12', using panels that were 24' in length. Coordinated the construction of a 24" x 24" 5,000PSI steel-reinforced concrete seawall cap with doweled joints approximately every 50' for structural integrity. Implemented double helix helical pile anchors as tiebacks at 5' on center, embedded into the concrete cap for added stability. Managed backfilling operations, totaling 1,980 tons, and ensured hydraulic compaction for structural support. Directed the application of flowable fill under the pool area (36CY) for optimal ground support. Led site restoration efforts, including the placement of St. Augustine sod covering 30,289 SF of affected areas. Installed a Kynar finish, black aluminum picket railing spanning 630LF for safety and aesthetics.

3357 S. Atlantic Ave. Daytona Beach, FL.

Project Budget: $303,000.00

Days Inn Tropical Shores President John Townsell
Oversaw the construction of a 50LF steel seawall return according to specifications provided by Zahn Engineering. Managed the use of AZ 14-770 steel Seawall Panels and coordinated the installation of 25' Chance triple helix helical anchors for panel reinforcement.
Ensured compliance with plans by constructing a steel-reinforced concrete cap and backfilling with 230 tons of beach-compatible sand, hydraulically compacted in 24" lifts.
Implemented weep holes as per plan specifications for effective drainage and erosion prevention. Executed void repair using steel mesh and Shotcrete to rectify erosion under planter areas. Led stormwater drainage system inspection via camera, organizing cleaning activities based on inspection results. Installed a new C-Inlet and facilitated its connection to the existing drainage system for improved water management.

401 Pinebluff Trail, Ormond Beach, FL.

Project Budget: $266,000.00

Joseph and Shannon King. General Contractor, East Coast Marine Construction & Design. This project included the engineering design, permitting and demolition of existing boathouse, fishing platform, and assoc. pilings, as well as the demolition of the deck portion of the wooden walkout. Installation of (50) 2.5 CCA pilings from midway point of walkway toward the water. The construction of appx. 500LF of 6' wide wooden walkout, deck and structural framing. The construction of a terminal platform featuring a covered boathouse, and recreational platform. The boathouse slip will measure 12' x 24' and will have a 4' walkway down the waterside of the slip and a 2' cantilever walk on the landward side. The slip will be covered by an architectural shingled hipped roof with 1' overhangs. The platform on the southern side of the boathouse will measure 20' x 16'.

29 Oceanshore Boulevard, Ormond Beach, FL.

Project Budget: $110,000.00

Michael Walther and Kathleen Wise. General Contractor, East Coast Marine Construction & Design. This project included the engineering design, permitting and the construction of a 85 LF of ½" thick fully boxed composite retaining wall including 15' returns on adjacent sides of the property line. The construction of a steel reinforced concrete cap as well as associated concrete deadmen.

MICHAEL FLETCHER

VICE PRESIDENT | CERTIFIED SPECIALTY STRUCTURE CONTRACTOR
EAST COAST MARINE CONSTRUCTION & DESIGN, INC.
SCC131153531

CONTACT

386-478-9063

Mike@eastcoastmarineconstruction.com

150 S. Palmetto Ave.
Suite: 201
Daytona Beach, FL. 32114

www.eastcoastmarineconstruction.com

SKILLS

- Project Management & Estimating
- Seawall, Dock & Coastal Structure Design
- Environmental Compliance & Wetland Mitigation
- Regulatory Compliance
- Client Relations & Stakeholder Communication
- Safety Protocols & Quality Control
- Construction Contracts & AIA Documents
- Budgeting & Resource Management

TECHNICAL PROFICIENCY

- MS Project
- AutoCAD Civil 3D
- Excel
- Word
- Monday.com

PROFILE

Mr. Fletcher is an accomplished Certified Marine Contractor and Vice President at East Coast Marine Construction & Design with over 15 years of project management, estimating, design, and field supervisory experience in the residential and commercial marine construction industry. His hands-on field expertise spans various trades and equipment operation, allowing him to lead complex projects with efficiency and precision. Michael has been instrumental in establishing East Coast Marine Construction as an industry leader known for its emphasis on safety, quality, and effective project execution.

NOTABLE PROJECTS

- **Hawaiian Inn Resort Hurricane Restoration** 2023-2024
  Project Budget: $2,200,000
  - Led the damage assessment and recovery efforts for The Hawaiian Inn Resort following two consecutive hurricanes.
  - Played a critical role in stabilizing the North Tower, using proprietary shoring techniques to prevent further erosion and collapse.
  - Managed the second phase of restoration, including the installation of 660 LF of AZ-14 steel sheet piles, 83 SS-175 Helical Anchors, and 6,000 tons of FDEP-approved sand fill.
  - Coordinated work during peak summer months and the sea turtle nesting season, ensuring zero environmental impact and maintaining a perfect safety record.
  - **Awarded the Pile Driving Contractor Association's Project of the Year Award for Earth Retention in 2024.**

- **Turnbull Creek Watershed Observation Deck** 2023-2024
  Project Budget: $268,000
  - Led the planning and construction of a 12' x 40' observation deck adjacent to the New Smyrna Beach multi-use trail, with an ADA-accessible walkway for the City of New Smyrna Beach.
  - Managed the project in compliance with environmental regulations, coordinating wetland mitigation efforts to minimize construction impact.
  - Collaborated with the New Smyrna Beach Airport and the FAA to ensure all safety protocols were met due to the project's proximity to the airport.
  - Ensured seamless communication among stakeholders, completing the project on time and within budget while maintaining meticulous documentation of progress, regulatory approvals, and compliance.

- **St. Maarten Condominiums Seawall Construction** 2023-2024

  Project Budget: $2,153,000

  - Secured necessary permits and managed the demolition and disposal of a failed seawall, adhering to strict environmental guidelines.
  - Directed the construction of a permanent seawall using 490 LF of FRP Composite sheet piles for enhanced durability and structural integrity.
  - Oversaw the creation of a steel-reinforced concrete seawall cap with a helical anchor tie-back system, incorporating drainage solutions such as 4" jet filter one-way weep holes to prevent erosion.
  - Managed the importation and hydraulic compaction of 4,224 tons of beach-compatible sand, ensuring solid support for the seawall.
  - Supervised the replacement of drainage systems, including the installation of 485 LF of HDPE perforated pipe and 57 stone, with filter fabric wrapping for enhanced performance and longevity.
  - Led site restoration efforts, including the installation of 25,900 SF of sod to revitalize the landscape.

- **Days Inn Tropical Shores** 2022-2023

  Project Budget: $426,000

  - Oversaw the construction of a 50LF steel seawall return, ensuring adherence to specifications provided by Zahn Engineering.
  - Managed the installation of AZ 14-770 steel seawall panels and coordinated the placement of 25' Chance triple helix helical anchors for panel reinforcement.
  - Ensured project compliance by constructing a steel-reinforced concrete cap and backfilling with 230 tons of beach-compatible sand, hydraulically compacted in 24" lifts.
  - Implemented weep holes as per plan to ensure effective drainage and mitigate erosion risks.
  - Directed void repair in planter areas using steel mesh and Shotcrete to address erosion concerns beneath the structure.
  - Led stormwater drainage system inspection using a camera, followed by coordinating necessary cleaning procedures based on the inspection findings.
  - Installed a new C-Inlet and managed its seamless connection to the existing drainage system for enhanced water management and flow.

- **4229 - 4235 - 4237 - 4239 S. Atlantic Ave., Port Orange** 2024-Present

  Project Budget: $1,100,000

  - Supervised the cleanup and disposal of a failed seawall across four contiguous addresses, ensuring timely and safe removal.
  - Assisted in implementing plan modifications to better meet the client's evolving needs and requirements.
  - Coordinated equipment and material deliveries, ensuring smooth operations and minimal project delays.
  - Applied for and acquired all necessary building permits, ensuring full compliance with local and state regulations.
  - Acted as the primary liaison between state and local authorities on matters ranging from environmental protection to building code compliance and public safety.
  - Oversaw all project budgets, billing, and change orders, ensuring financial accuracy and project delivery within budget.
  - Led the installation of a 360LF vinyl seawall with a steel-reinforced concrete cap, providing long-term protection against erosion.
  - Directed the installation of helical anchor tiebacks to enhance seawall stability.
  - Managed the construction of a 50LF steel sheetpile return wall and concrete cap to complete the structural integrity of the seawall.
  - Supervised the construction of a 140LF CMU block retaining wall for improved soil retention and stability.
  - Coordinated the import and installation of 1,000 tons of FDEP-approved backfill material to meet regulatory standards.
  - Directed the construction of three timber dune walkover structures, enhancing access while preserving the natural environment.

REFERENCE

Available Upon Request

Peter D Kolb

EDUCATION
• B.A. University of Long Island, Southampton Campus. Graduated 1994.

PROFESSIONAL REGISTRATIONS/CERTIFICATIONS

- Construction Quality Management/ Army Corps of Engineers
- State of Florida Qualified Stormwater Management Inspector
- Erosion and sediment Control Responsible Land disturber/Common Wealth of Virginia/ #29111
- OSHA 10 hr Safety /#36-003277948
- Heartsaver First Aid CPR AED
- Jacobs Technology Safety Trained
- NASA Safety Trained
- US Navy Shipyard Trained
- OSHA 30 hr safety and Health#17-600596737
- 40 hr Hazwoper Trained- # CI-009
- Certified Rigger I
- Certified Rigger II
- Certified Signal Person
- ACI membership
- Trench Safety Certified
- International Propeller Club member

East Coast Marine Construction & Design: Project Manager
July 2023-Present
Project Management and Estimating for residential and commercial construction. Coordinate schedules and budgets with field crews. Ensure quality control and jobsite safety. All project management duties such as submittals, RFIs, Chang Orders, Material acquisition.

Poseidon Dredge & Marine, Inc: VP of Operations
June 2018- July 2023
Run day to day operations from the office and coordinate with field supervisors and office staff. Oversee all project management and estimating.

Shoreline Foundation Inc: Project Manager
October 2016-June 2018
A Heavy Marine Contractor specializing in seawalls and large piers. Responsible for buyout, finding subcontractors, take offs, work plans, cost control, purchase orders, writing subcontracts, daily reports, material purchases, training field personnel, hiring field personnel, quality control, submittals, RFIs, change orders, and scheduling.

Crofton Industries: Oct.2010-April 2016.
Project Manager/Estimator
A 24 hour service for Commercial Diving, Ship Husbandry, Heavy Marine Construction, Mobile crane and floating crane barge services. Duties included Estimating, Project Management including: takeoffs, managing and acquiring subcontractors, maintaining and building client relations, writing and submitting proposals, managing crews and equipment, Lift Plans, Safety Plans, Work Plans, design build, job cost reporting, job cost projections, and permit acquisition.

D.K. Nunnally Company: 1997-Oct. 2010. Vice President
A Building and Construction Company specializing in DOD contracting. Duties include day to day operations including: Estimating, Project Management, Contractual reviews and drafting, Material and Equipment acquisition, Payroll, Managing and obtaining subcontractors, scheduling, and quality control.

Skills

Blue print reading and take off for all trades, estimating labor and material, obtaining vendors and subcontractors, subcontract writing, procurement, cost analysis, cost projections, constructability assessments, creating safety procedures and policies, work plans, lift plans, safety plans, proposals, owner- client relations, negotiations, scheduling job cost reporting, operations management, administrative duties, design build. Experienced in NAVFAC, Army Corps, MWR, DOD, DOT, Municipality, University, and private contracts and projects, interviewing and obtaining specialty personnel, project management, submittals, review and understanding of specifications and contract requirements. Experienced in Timberline, ProCore, Microsoft Project, and creating specialized spread sheets.

EXPERIENCE SUMMARY

Mr. Kolb has over 30 years of project management experience and estimating in the commercial construction industry. Prior to working in construction management Mr. Kolb worked in the Field hands on with various trades. Those trades include but are not limited to Masonry, Concrete, Steel, Carpentry, Electrical, & Mechanical. This field experience provides Mr. Kolb with vast knowledge of different trades enabling him to drive complex projects efficiently and safely. Mr. Kolb was project manager and estimator for Crofton Industries. Daily duties involve; crane lift plans, crane quotes, project estimating, project management, billing for projects estimated and managed, ordering materials, soliciting suppliers and vendors, preparing project schedules, preparing submittals, preparing safety plans and procedures, developing standard operating procedures for boat, barge, and construction activities, meeting and negotiating with owners, preparing SWPPs, permitting, and other project management and estimator duties. In addition to these duties Mr. Kolb also performs field layout and quality control and manages subcontractors.

Previously Mr. Kolb was Vice President of the D.K. Nunnally Company & Poseidon Dredge & Marine. As Vice President Mr. Kolb oversaw daily operations and managed superintendents, project managers, estimators, and office staff. This experience gives Mr. Kolb a clear understanding of cost, productivity, client relationships, and management with current and future projects.

REPRESENTATIVE PROJECTS

Wedmore Place at the Williamsburg Winery.
Mr. Kolb was the Project Manager and assisted the owner with design and constructability issues. Mr. Kolb acted as owner's representative with County and State officials. Wedmore Place is a 20,000 sf, 3 level, 30 guest suite luxury hotel with a Chateau look and courtyard. The building was built wood framed with brick veneer and precast window surrounds. A 14/12 roof was designed and built based on a 200 year old Belgian design. Only one other roof structure designed in this way was completed in the United States. Each of the 30 suites have working, wood burning fireplaces. Accessory Structures include terrace and pool, pool house with exercise rooms and spa, pump house, and equipment shed. Project date: 2006.Contract amount: $5.6 million. Architect: JohnHopke:Contact: Patrick Duffler. For details see www.wedmoreplace.com



Christopher Newport University Entrance Plaza
Mr. Kolb was the project manager for constructing a main entrance for Christopher Newport University**.** The project included regarding 1.5 acres, concrete sidewalks topped with precast pavers, block and brick seatwalls and entrance sign wall, formed and cast in place concrete foundation for 30' bronze statue plus setting of statue, storm drainage, extensive landscaping, site lighting, and irrigation. Project date: 2007. Contract amount $890,000. Architect: Carlton Abbott & Partners, Ricky Wiatt. Contact: Bob Goodhart, CNU-757-508-2955





Mariner's Museum Entrance Plaza
Mr. Kolb was the project manager for the main entrance plaza for the Mariner's Museum in Newport News, Va. The work included regarding approximately 3 acres of site, concrete sidewalks, curved cast in place concrete sign wall 10' high by 500' long with exposed aggregate face, CIP seatwalls, CIP concrete foundation and waterfall, and foundation and steel supports for setting of USS United States propeller and shaft. Project also included storm drainage, extensive landscaping, site lighting, and irrigation. Project Date: 2008. Contract amount: $1,217,771. Architect: Carlton Abbott & Partners, Ricky Wiatt. Contact: Ricky Wiatt-757-220-1095





Broad Creek Park

Mr. Kolb was the project manager for constructing a 5 acre park at the corner of Virginia Beach Boulevard and Ballentine Blvd in Norfolk, Virginia. Mr. Kolb also acted as Liaison between the Mayor's office, Parks Dept, and Norfolk Public works. Work included regarding the 5 acre site, road and gutter replacement on Ballentine Blvd, curbs & gutters, concrete sidewalks, asphalt trails, sidewalks with pavers, interactive fountain, observation pier on wood piles above a drainage pond, and ornamental fencing. Project also included storm drainage, preparations for extensive landscaping, site lighting, and irrigation. Project Date: 2008. Contract amount: $1,400,000. Architect- Keith Oliver, Insites. Contact: Charles Swan, Norfolk Public Works- 757-644-4677.





Hercules Boat Ramp and Courtesy Pier

Mr. Kolb worked on this project as Project Manager and field Superintendent. The project consisted of developing and clearing 2 acres of Hill side along the Nottoway River in Franklin. A 24 space parking lot for trailers was built along with a boat ramp, approach pier, and courtesy pier. The boat ramp was a cast in place slab with a v groove finish. Rip rap placement along its edges for scour protection. The Piers were built on timber piles with timber decking and handrails. A steel cofferdam was installed to enable excavation of the boat ramp. Project Date: October 2012 Contract Amount: $388,000 Design Group: Hurt & Proffitt Contact: Earl Dickerson 434-572-7661 Owner: Virginia Department of Game and Inland Fisheries.



Rens Road Boat Ramp and Courtesy Pier

Mr. Kolb worked on this project as Field Superintendent and Project Manager. This project involved locating a boat ramp and courtesy pier in a tight work site. The boat ramp was cast in place with v-grooving finish. The Courtesy Pier was on timber piles with timber decking.

A steel cofferdam was used to enable excavation of th boat ramp. This project was a design build project for the City of Poquoson.

Project Date: July 2013 Contract Amount: $ 188,000 DesignGroup: Crofton/Hurt & Proffitt- Contact Brad Gribble 757-3971131. Owner: City of Poquoson.





Honeywell Pier Rehabilitation



Mr. Kolb worked on this project as the onsite Project Manager. The project consisted of the rehabilitation of the structural elements of Honeywell's loading Pier. To included concrete replacement of concrete beams, concrete caps, concrete deck sections, timber fender replacement, and Dive operations to repair support piles. The Pier was approximately 600 LF in length and remained fully operational during the Pier Rehabilitation. Challenges with this project included workers working in IDLH atmospheres and with constant ship traffic arriving and leaving the pier. Mr. Kolb was responsible for the safety of the crew, and direction to the crew leaders and superintendent. Approximately 46 men worked under Mr. Kolb on this project as well as a 3 man dive team. Mr. Kolb coordinated repairs with Honeywell's loading schedules of phenol and ammonia sulfate. Mr. Kolb was responsible for coordinating shipping traffic to the plant as well as the construction schedule. Mr. Kolb's duties included Crane lift plans and safety, Supervision of Safety officers, monthly billing to the client, Payroll for Crofton staffing, project scheduling, ordering materials and equipment, job cost reporting, and daily direction to supervisors and foreman.
Project Date: August 2013- July 2014 Contract amount: $ 4,500,000.00 Design Group: Collins Engineering. Contact: Tim Weeks, Collins 757-873-0251. Honeywell Contact: Ken Purcell 804-720-4664

Fort Norfolk Bulkhead and Shoreline Repairs



Mr. Kolb worked on this project as the initial estimator and Project Manager. The project consisted of excavating the existing tie back system for the existing bulkhead. New PZ-27 sheet pile was installed for 126 linear feet. New steel wale and cap tied in to the existing tie back system. The second phase of the project involved installing 990 tons of class I rip rap with a topping of oyster shells and spat on oyster shells, the oyster shells and spat on shells create a future oyster reef for the Army Corps of Engineers. Mr. Kolb prepared all submittals and created work plans, safety plans, and prepared company policies on operations working with the Army Corps of Engineers.
Project Date: October 2014 through April 2015. Contract amount: $600,000. Design Group: US Army Corps of Engineers. Contact: Jorel Nadal 757-201-7366

Elizabeth River Trail Phase III



Mr. Kolb worked on this project as the initial estimator and Project Manager. The project consisted of constructing a serpentine pedestrian and bicycle bridge that traversed across a swamp and creek approximately 280 linear feet in length. The bridge was a timber bridge resting on timber piles and caps constructed to VDOT standards and specifications. The project was for the City of Norfolk and funded by the Virginia Department of Transportation. Mr. Kolb held weekly progress meetings, prepared all submittals, work plans, and monthly billing for the project.

Complexities of the project included working in an environmentally sensitive area within a residential neighborhood, traversing a swamp and creek, working within close proximity of powerlines, and keeping an adjacent road open to traffic while conducting pile driving operations. Project Date: March 2015 through July 2015. Contract amount: $363,571.00 Design Group: Liberty Engineering Contact: Jan Harris 757-499-2791

North Main Street Rehabilitation
Mr. Kolb is currently project manager and field QC for this project. Project includes Installation of RCP drainage pipe, drop inlets, excavation, grading, curb and gutter, sidewalks, traffic signals, asphalt milling, asphalt overlay, E&S, and traffic control. Project located on North Main street in front of the old OBICI hospital site. Project date April 2016- Oct, 2016. Contract Amount: $1,200,00. Engineer: City of Suffolk and Kimley Horn. Contact: Ferris Cresske, City of Suffolk Public works. 757-353-5261.



USCG Miami Beach Bulkhead Replacement Project Phase I
Mr. Kolb was brought in as project manager to construct a new Bulkhead at USCG Miami Beach while remaining fully operational. The work included Installation of a sheet pile wall, design build soil anchor system, concrete cap placement, reinforcing steel, lighting package, hanging fender system. Reconstructed the east side of base. Project Date October 2016. Contract Amount $ 1,588,000. Engineer: USCG CEU Miami. Contact: USCG Project Manager, Lt. Eva Gonzales 703-472-7162



USCG Miami Beach Bulkhead Replacement Project Phase II
Mr. Kolb continued as project manager to construct thePhase II of the new Bulkhead at USCG Miami Beach while remaining fully operational. The work included Installation of a sheet pile wall, design build soil anchor system, concrete cap placement, reinforcing steel, lighting package, hanging fender system. Reconstructed the south and west side of base. Project Date October 2016. Contract Amount $ 3,148,300.00 Engineer: USCG CEU Miami. Contact: USCG Project Manager, Lt. Eva Gonzales 703-472-7162



Bentley Bay Marina
Mr. Kolb was the project manager for this project. The work included installing 2 each marina piers. Constructed with concrete piles, concrete beams, FRP grating, Fire system, Plumbing, electrical, with custom access gangways and platforms. Project Date: November 2016. Contract Amount: $ 1,288,000. Engineer: Cummins Cederberg. Contact: Robert Alexander, SRC Properties. 305-495-4450.



Scott's Creek Park
Mr. Kolb was the project manager for renovating a vacant city block and turning it into a park. The work included regarding, sidewalks, cast in place concrete planters and seatwalls and sign walls, storm drainage, extensive landscaping, Ornamental fencing, wetland mitigation, and minor road reconstruction. Project Date: 2007. Contract Amount: $373,000. Architect: Woolpert, Inc. Contact: Jeff Harper, City of Portsmouth Engineering, 757-393-8592.

Yeates Middle School Renovations
Mr. Kolb was the project manager for a renovation of a middle school in Suffolk, Virginia during a summer recess. The project consisted of a complete re build of the auditorium, gymnasium, locker rooms, all bathrooms, Mechanical systems, Fire Alarm, and lighting. Mr. Kolb completed a $1 million renovation in three months on time and within budget. Project Date: 2005. Contract Amount: 1,155,000. Architect: Rodriguez Ripley, Maddux, & Motley, Architects. Contact: Randy Brauner & Rob Berz, 757-622-2828

Celey Street Houses
Mr. Kolb was the project manager for constructing seven new homes for the City of Hampton's Redevelopment & Housing Authority. Over a 6 month period seven new homes were constructed on a city block. Each home was approximately 1800 square feet. The project included wood frame construction, storm drainage, re-grading a city block, street repairs, and utilities.
Project Date: 2004. Contract amount: $ 1,014,343. Architect: HRHA. Contact: Bill Lockard, HRHA, 757-727-1521

NASA ada upgrades at various locations
Mr. Kolb was project manager and safety officer for installing ada upgrades at various locations at NASA/Langley Research Center in Hampton, Virginia. The project included new sidewalks, cross walks, auditorium ramps, automatic door openers, bathroom renovations, lighting renovations, and door replacement. Project took place while structures were occupied and operational. Project Date: 2010 Contract Amount: $150,000 Architect: Jacobs Technology. Contact: Allen Derby, Jacobs Technology, 757-224-7800.

Langley Air Force Base Fuel Pier Rehabilitation
Mr. Kolb worked as Estimator and Project Manager Making Structural and Safety Repairs to the Langley Air Force Base Fuel Pier while being occupied and operational. The repairs consisted of replacing structural hardware brackets for the Fuel arm, Man Lift, and Gangway. Replacement and rehabilitation of all handrail elements. Replacement of deteriorated Dolphin Piles. Using Divers to install pile wraps on existing piles supporting the pier. Also, using Divers to repair and replace cross bracing. Replacement of Deteriorated stringers and deck boards. Project Date:2010 ContractAmount: $400,000. Design Group: AMSEC Contact: Keith Brown, AMSEC, 770-420-2100 X222

HRSD Force Main Structural Replacement
Mr. Kolb worked as Estimator and Project Manager for the Work consisting of, but is not limited to the following:

1. Repairing, replacing and installing new structural supports for three South Shore Interceptor Force Mains. With the Project is located at the following sites:
    1. Line 013 along Shore Drive over Lake Whitehurst in Virginia Beach, VA (8 ea new timber pile bents)
    2. Line 117 along Norfolk Southern Corporation right-of-way underneath I-264 in Virginia Beach, VA (45sf of concrete spall repairs)
    3. Line 160 along Bainbridge Boulevard in Chesapeake, VA (26 ea new timber pile caps)

The project was within the flight path of Norfolk International Airport. Mr. Kolb coordinated crane activity with the Airport Control Tower and FAA on an hourly basis for the project. Mr. Kolb worked with engineers to develop a work repair that minimized impact to flight plans.
Project date: 2012 Contract Amount: $ 308,000. Design Group: Collins Engineering. Contact: Tim Weeks, Collins, 757-873-0251

MARINE PROJECTS

Honeywell Pier Rehabilitation –Chesterfield, VA
Project included concrete replacement of concrete beams, concrete caps, concrete deck sections, timber fender replacement, and Dive operations to repair support piles. The pier had to remain active during construction activities. Work was conducted in hazardous environment requiring supplied forced air for all workers.
Project Manager/Estimator - $ 4.5 Mil



Fort Norfolk Bulkhead and Shoreline Repair – Norfolk, VA
Project consisted of excavating the existing tie back system for the existing bulkhead. New PZ-27 sheet pile was installed for 126 linear feet. New steel wale and cap tied into the existing tie back system. The second phase of the project involved installing 990 tons of class I rip rap with a topping of oyster shells and spat on oyster shells, the oyster shells and spat on shells create a future oyster reef for the Army Corps of Engineers.
Project Manager/ Estimator - $600K



Elizabeth River Trail Phase III – Norfolk, VA
The project consisted of constructing a serpentine pedestrian and bicycle bridge that traversed across a swamp and creek approximately 280 linear feet in length. The bridge was a timber bridge resting on timber piles and caps constructed to VDOT standards and specifications.
Project Manager/ Estimator - $364K



MARINE PROJECTS

USCG Miami Beach Bulkhead Replacement Project Phase I

Mr. Kolb was brought in as project manager to construct a new Bulkhead at USCG Miami Beach while remaining fully operational. The work included Installation of a sheet pile wall, design build soil anchor system, concrete cap placement, reinforcing steel, lighting package, hanging fender system.

Project Manager – $1.5 Mil



USCG Miami Beach Bulkhead Replacement Project Phase II

Phase II of the new Bulkhead at USCG Miami Beach while remaining fully operational. The work included Installation of a sheet pile wall, design build soil anchor system, concrete cap placement, reinforcing steel, lighting package, hanging fender system.

Project Manager - $3.2 Mil



Bently Bay Marina- Miami Beach

Mr. Kolb was the project manager on this project. The work included installing 2 each marina piers, Constructed with concrete piles, concrete beams, FRP grating, Fire System, Plumbing, Electrical, with custom access gangways and platforms.

Project Manager- $ 1.28 Mil.



MARINE PROJECTS

Currie Park Boat Ramp Improvements, Staging Docks, and Dredging- West Palm Beach, Fl.
Mr. Kolb was project manager for this project. The work included removal and replacement of a six slip concrete boat ramp with finger pies on concrete piles for boat access. Boat Ramp was built within a cofferdam. Large excavation required to remove poor soils 16' below grade. Installation of timber staging docks, Police dock with boat lift, Dredging out the access canals to the boat ramp and providing navigational markers.
Project Manager- $ 1.5 Mil



Moonshine Creek- Jupiter, Fl.
Mr. Kolb was project manager and estimator on this project. Work included restoring an old ox bow in the Loxahatchee River within a State Park. Project involved dredging and installing a rip rap plug to direct river flow back into the Loxahatchee. The project site was in an environmentally sensitive area of the park with narrow access.
Project Manager/ Estimator- $ 467K

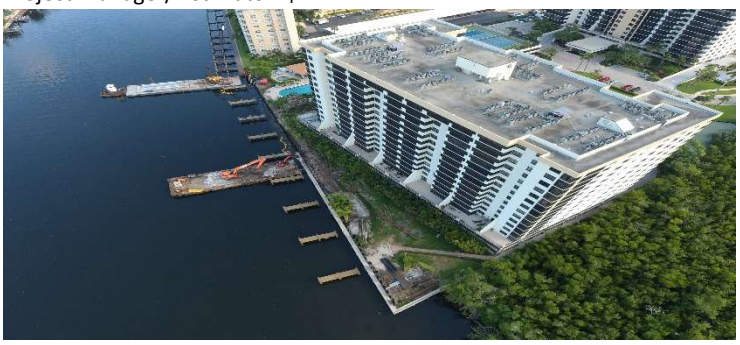


Mangrove Island- Jupiter, Fl.
Mr. Kolb was project manager and estimator on this project. Work included installing rip rap breakwaters around an existing mangrove island within the vicinity of the Jupiter Inlet on the Intra Coastal Waterway. Project involved, geotextile fabric placement, bedding stone, and rip rap. Site access was restricted by shallow waters.
Project Manager/ Estimator- $ 350K



MARINE PROJECTS

Coronado Seawall Replacement- Highland Beach, Fl.
Mr. Kolb was project manager and estimator for this project. Work included removal of existing concrete seawall and docks. Installation of new steel sheet pile wall with concrete cap, concrete batter piles, new fire suppression system, site restoration, and dock restoration. Site was in close proximity to existing condominium along the intra coastal waterway.
Project Manager/ Estimator- $ 1 Mil



Hollocaust Museum Seawall- Miami Beach, Fl.
Mr. Kolb was project manager on this project. Work included replacement of existing concrete panel seawall. A new concrete panel seawall was installed with concrete cap, king piles, batter piles, and diffuser box for larger upland drainage project. Work site was within a canal in Miami Beach along the Museum. Restricted access made the project challenging.
Project Manager- $ 4 1 Mil



Davis Island Park Boat Ramp & Floating Docks- Tampa, Fl.
Mr. Kolb was project manager and estimator for this project. Removal of existing timber docks, Dredging, Repairs to existing boat ramp, and installation of new floating dock system. Site was located on the waters of Hillsborough Bay. Boat ramp was located at the end of an active airport and coordination with the Tower and FAA was required.
Project Manager/Estimator- $ 500K



MARINE PROJECTS

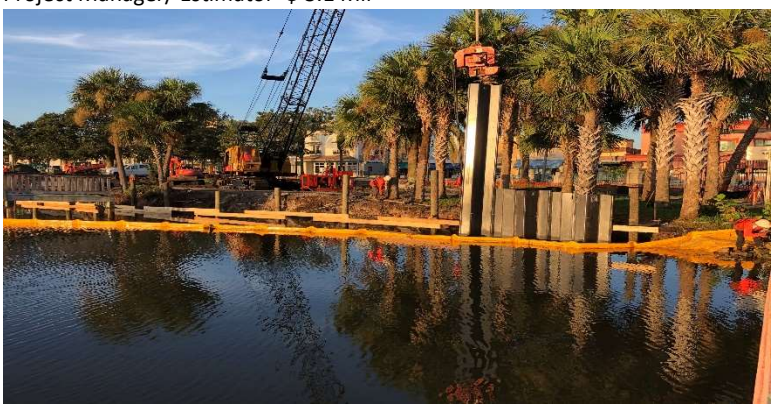
Lowry Park Boat Ramp, Bulkhead, & Docks- Tampa, Fl.
Mr. Kolb was project manager and estimator for this project. Site was located on the Hillsborough River at an active park. Project required removal of existing boat ramp, docks, and timber bulkhead. A new steel sheet pile bulkhead was installed with tie backs and a concrete cap. A 2 slip concrete boat ramp was installed with a timber fixed dock and floating dock system.
Project Manager/ Estimator- $ 800K



Isle of Palms Seawall Replacement- Fort Lauderdale, Fl.
Mr. Kolb was project manager and estimator for this project. Site was located along a residential canal. Project included removal of existing concrete seawall and replacement of a residential road adjacent to the seawall. The new seawall was constructed out of steel sheet pile with a concrete cap. The Drainage outfalls were installed from the road and out the new seawall. Project also included repaving road and install site utilities.
Project Manager/ Estimator- $ 1.9 Mil



Riverfront Park Seawall Replacement- Daytona Beach, Fl.
Mr. Kolb was project manager and estimator for this project. The project included replacement of an old coquina rock wall along a canal at River Front Park. A new composite sheet pile wall was installed with a concrete cap. 9 large outfalls with backflow preventers were installed along the wall for site drainage. Three large overlook docks were built along the wall. The project was featured in Pile Driver Magazine.
Project Manager/ Estimator- $ 3.1 Mil



MARINE PROJECTS

August Drive Bridge Rehab- Jacksonville, Fl.
Mr. Kolb was project manager and estimator for this project. The project included replacing the bridge abutments for the August Drive Bridge servicing the cruise terminals at the Port of Jacksonville. The Bridge had to be operational during the entire project. New steel sheet pile abutment walls were installed with concrete cap and cathodic protection. Bridge approach slabs were replaced during the phases of construction. After structural completion the approach roads and bridge were repaved.
Project Manager/ Estimator- $ 2.2 Mil



Palm Beach County Inshore – West Palm Beach, FL.
Mr. Kolb was project manager and estimator for this project. The project included importing sand and stone to build islands within the IntraCoastal Waterway. Islands are to serve as habitat for birds, oysters, and mangroves. Approximately 40,000 tons of sand and 20,000 tons of sand brought by barge and placed with grades and lines of project design. Work took place in an environmentally sensitive area.
Project Manager/ Estimator- $ 3.2 Mil



Ocean Inlet Marina Replacement – Boynton Beach, FL.
Mr. Kolb was project manager and estimator for this project. The project included complete replacement of a Palm Beach County Marina. Elements included concrete seawall replacement with king piles, concrete fixed docks, concrete floating docks, landscaping, electrical, plumbing, and fire system.
Project Manager/ Estimator- $ 2.6 Mil



FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange)**

1. Company Name: Hawaiian Inn Beach Resort Condominium Association, Inc
   Contact Person: Gary Fendononko
   City, State: Daytona Beach, Fl. 32114
   Telephone Number: 352-255-3929
   Email Address: semanagement@aol.com
   Description of goods/services provided: Seawall,Building stabilization, Site Remediation
   Contract Amount: $ 1,993,461.37
   Start/End Date of Contract: October 2023
2. Company Name: Daytona Beach Shores LLC C/O Byron Smith
   Contact Person: Byron Smith
   City, State: Daytona Beach Shores, 32118
   Telephone Number: 407-509-1136
   Email Address: Bryon_Smith@wgresorts.com
   Description of goods/services provided: Concrete Seawall, tiebacks, site restoration
   Contract Amount: $ 1,034,323.28
   Start/End Date of Contract: September 2024
3. Company Name: White Surf Condominium
   Contact Person: Laurel Beaver
   City, State: Daytona Beach, Fl. 32114
   Telephone Number: 386-761-6920
   Email Address: whitesurfcondominium@gmail.com
   Description of goods/services provided: Steel Seawall, tiebacks, drainage field, site restoration
   Contract Amount: $ 1,224,557.61
   Start/End Date of Contract: October 2023

This document must be completed and returned with your Submittal.

(Form 7.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. A minimum of three (3) projects must be listed below. The Owner reserves the right to check references and confirm information provided herein.

List clients to whom you currently provide or have in the past provided equal or similar services to those required under the City's contract as outlined in this bid package. A minimum of three (3) projects shall be listed below in order to bid on this contract. The Owner reserves the right to check references and confirm information provided herein.

1. Contact Name: Steven Mckee
   Phone: 904-535-8484
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: 2
   Description of service: Permitting, Design, and construction services. Composite sheet pile walls, dune walkover, site restoration
2. Contact Name: Jon Walsh- Volusia County Coastal Division
   Phone: 386-547-0122
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: 2
   Description of service: Seawall Replacements, Dune Walkovers. Site Restorations
3. Contact Name: Stewart Cruz- Daytona Beach Shores
   Phone: 386-763-5361
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: 2
   Description of service: Dune Walkovers, Concrete sidewalks, Handrails, Coquina Rock installations.

This document must be completed and returned with your Submittal.

ITB 25-12 Causeway Boat Ramp and Park Improvements

Boat Ramp Experience

ECMCD's project manager has extensive experience building boat ramps. ECMCD's project manager will be on site supervising this project and ensuring it is built as designed. ECMCD's project manager will be Peter Kolb. Mr. Kolb has built boat ramps for the City of Tampa, City of West Palm Beach, City of Poquoson in Virgina, and for the State of Virgina. All of these boat ramps were cast in place using the V groove finish for traction. Mr. Kolb's Florida boat ramp projects are:

Currie Park Boat Ramp Improvements, Staging Docks, and Dredging- West Palm Beach, Fl.
Mr. Kolb was project manager for this project. The work included removal and replacement of a six-slip concrete boat ramp with finger pies on concrete piles for boat access. Boat Ramp was built within a cofferdam. Large excavation required to remove poor soils 16' below grade. Installation of timber staging docks, Police dock with boat lift, dredging out the access canals to the boat ramp and providing navigational markers.
Project Manager- $ 1.5 Mil



Davis Island Park Boat Ramp & Floating Docks- Tampa, Fl.

Mr. Kolb was project manager and estimator for this project. Removal of existing timber docks, Dredging, Repairs to existing boat ramp, and installation of new floating dock system. Site was located on the waters of Hillsborough Bay. Boat ramp was located at the end of an active airport and coordination with the Tower and FAA was required.

Project Manager/Estimator- $ 500K



Lowry Park Boat Ramp, Bulkhead, & Docks- Tampa, Fl.

Mr. Kolb was project manager and estimator for this project. The site was located on the Hillsborough River at an active park. Project required removal of existing boat ramp, docks, and timber bulkhead. A new steel sheet pile bulkhead was installed with tie backs and a concrete cap. A 2-slip concrete boat ramp was installed with a timber fixed dock and floating dock system.

Project Manager/ Estimator- $ 800K



FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: All State Civil Construction, Inc.

Description of Work: Site Utilities, Paving, Site Restoration

Percent of Contract Price: 8%

Previous Experience Together: ☒Yes ☐No

Subcontractor No. 2

Name: Seismic Surveys

Description of Work: Vibration Monitoring

Percent of Contract Price: 1%

Previous Experience Together: ☒Yes ☐No

Subcontractor No. 3

Name: Sliger & Associates Surveyors

Description of Work: Layout, Control, Survey

Percent of Contract Price: 1%

Previous Experience Together: ☒Yes ☐No

Subcontractor No. 4

Name: Bellingham Marine

Description of Work: Floating Dock Manufacturer and installations

Percent of Contract Price: 10%

Previous Experience Together: ☒Yes ☐No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐Yes ☐No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, John Zemball / President, on behalf
(Print Name and Title)

of East Coast Marine Construction & Design ("Company"), certify that East Coast Marine Construction & Design
(Company Name) (Company Name)

does not:
1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over $1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

East Coast Marine Construction & Design
COMPANY NAME

SIGNATURE

John Zemball
PRINT NAME

President
TITLE

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒ is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher Notary Public, State of FL.

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.11 – E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Causeway Park Boat Ramp and Parkinglot Improvements

Solicitation Number: ITB # 25-12

I, the undersigned hereby certify that East Coast Marine Construction & Design **(insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.**

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of East Coast Marine Construction & Design **(insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.**

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

John Zemball / President
Print or Type Name, Title

Signature of Affiant

824168719
Federal Employer ID Number (FEIN)

2292730
E-Verify Number

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher
Printed, typed or stamped name, commission and expiration:

Notary Public, State of FL.

This document to be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

An official website of the United States government Here's how you know

E-Verify Menu

My Company Account

My Company Profile

Company Information

Company Name

East Coast Marine Construction and Design, Inc.

Doing Business As (DBA) Name

East Coast Marine Construction and Design, Inc.

Company ID

2292730

Enrollment Date

Oct 10, 2023

Employer Identification Number (EIN)

824168719

Unique Entity Identifier (UEI)

DUNS Number

Total Number of Employees

10 to 19

NAICS Code

237

Sector

Construction

Subsector

Heavy and Civil Engineering Construction

Edit Company Information

Employer Category

Employer Category

None of these categories apply

Edit Employer Category

Company Addresses

Physical Address

150 S. Palmetto
201
Daytona Beach , FL 32114

Mailing Address

Same as Physical Address

Edit Company Addresses

Hiring Sites

Number of Sites

1

Edit Hiring Sites

Company Access and MOU

My Company is Configured to:

Verify Its Own Employees

Memorandum of Understanding

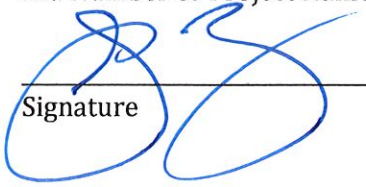
View Current MOU

FORM 7.12 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Primary Covered Transactions

(To be completed by Prime Contractor)

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
   (b) Have not within a three-year period preceding this proposal bee convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
   (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
   (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

East Coast Marine Construction & Design	ITB # 25-12
Organization Name	Bid Number or Project Name
John Zemball / President	
Name and Title of Authorized Representative	Signature Date

This document must be completed and returned with your Submittal

FORM 7.13 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH FOREIGN ENTITIES OF CONCERN

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the President (Title) of East Coast Marine Construction & Design (Business Name) which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1)(c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20___ Signed: _____

Entity: East Coast Marine Construction & Design Name: John Zemball

Title: President

STATE OF: Florida COUNTY OF: Volusa

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 25th day of April, 2025, by John W. Zemball and who:

☒is personally known to me; or ☐ has produced _____ as identification.

Michael J. Fletcher

Notary Public, State of Florida at Large: (seal)

Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: 9/20/28

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

This document must be completed and returned with your Submittal

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

FORM 7.14 – NO BID RESPONSE

If your company will not be submitting a bid in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #25-12 CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Company Name: East Coast Marine Construction & Design

Contact Person Name & Title: John Zemball / President

Address: 150 S. Palmetto Ave. Suite 201. Daytona Beach, Fl. 32114

Telephone: 386-777-7440 Email Address: john@eastcoastmarineconstruction.com

Please check a reason for a "no response".

☐Specifications "too tight" or geared toward on brand or manufacturer (please explain below)

☐Insufficient time to respond

☐Specifications unclear (please explain below)

☐We do not offer this product/service or an equivalent

☐Our product schedule does not permit us to perform within stated timeline for the project

☐Unable to meet specifications

☐Unable to meet bond requirements

☐Unable to hold prices firm throughout the term of the contract period

☐Unable to meet insurance requirements

☐Other: _____

Print Name: John Zemball

Signature: _____ Date: 2/25/25

Additional Information:

_____

_____

_____

_____

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, East Coast Marine Construction & Design, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

John Zemball / President

Name & Title of Contractor's Authorized Official

Date: 4/28/25

This document must be completed and returned with your Submittal

(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #25-12
CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS

Name of Business:	East Coast Marine Construction & Design
Contact Person:	John Zemball
Email Address:	john@eastcoastmarineconstruction.com
Authorized Signature:	

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization (Including Dewatering)	LS	1		$ 128,887.00 -
2	Construction and As-Built Survey	LS	1		$ 22,149.00 -
3	Vibration Monitoring	LS	1		$ 16,690.00 -
4	Environmental Compliance (Including Turbitidity Control)	LS	1		$ 26,051.00 -
5	Demolition, Hauling, and Disposal	LS	1		$ 138,037.00 -
6	Aluminum Gangway (30' x 5')	EA	4	$ 21,648.00	$ 86,592.00 -
7	Concrete Floating Dock (Includes 14-Inch Square FDOT Marine Grade Concrete Piles)	SF	960	$ 237.69 -	$ 228,182.40 -
8	Fixed Concrete Access Dock	EA	3	$ 48,321.00	$ 144,963.00 -
9	Timber Access Dock (Includes 12-Inch Round SYP Timber Piles, Marine Grade)	SF	320	$ 240.39 -	$ 79,924.80 -
10	CMI UC-50 Composite Sheet Pile or Approved Equivalent	LF	242	$ 703.77 -	$ 170,312.34 -
11	Concrete Boat Ramp	SF	6,560	$ 69.62 -	$ 456,707.20 -
12	FDOT Aluminum Railing - Type 1 Picket Infill Panel	LF	232	$ 75.46 -	$ 17,506.72 -
13	Milling (8-Inch Depth)	SY	2,178	$ 5.80 -	$ 12,632.40 -
14	2-Inch Type S-1, S-2, or Superpave, 12.5 mm	TN	240	$ 218.46 -	$ 52,430.40 -
15	6-Inch Limerock Base Course	SY	2,178	$ 18.23 -	$ 39,704.94 -
16	Pavement Marking and ADA Signs	LS	1		$ 6,732.27 -
17	Concrete Bumper Guards	EA	22	$ 250.27 -	$ 5,505.94 -
18	Bollards	EA	4	$ 940.43 -	$ 3,761.72 -
19	Environmental Signs and Information Kiosk	LS	1		$ 5,470.62 -
20	Concrete Flush Curb	LF	60	$ 190.92 -	$ 11,455.20 -
				TOTAL PRICE:	$ 1,653,695.95

LEGEND
EA - EACH
LF - LINEAR FEET
LS - LUMP SUM
SF - SQUARE FEET
SY - SQUARE YARD
TN - TON

FLORIDA SURETY BONDS, INC.

620 N Wymore Road Suite 200
Maitland, FL 32751
(407) 786-7770 ♦ Fax (407) 786-7766

Direct Line: (407) 478-6840
www.FloridaSuretyBonds.com
Cheryl@FloridaSuretyBonds.com

January 29, 2025

RE: East Coast Marine Construction & Design, Inc.

To Whom It May Concern,

We are pleased to be the surety agents for East Coast Marine Construction & Design, Inc. Bonds are currently written through Employers Mutual Casualty Company, which is Best Rated "A, XIV" and has a Treasury Listing of $157,034,000.

We anticipate no difficulties in providing surety bonds for East Coast Marine Construction & Design, Inc. in the $10,000,000 single, $15,000,000 bonded aggregate range.

We would be more than willing to provide the necessary performance and payment bonds for our contractor; however, it must be understood that our ability to provide any surety credit is based upon normal and standard underwriting criteria at the time of their request.

This letter is not an assumption of liability, nor is it a bid, performance and/or payment bond. It is issued only as a bonding reference requested by our client. Neither our agency, nor the surety, are liable for any damages relating to this letter or project.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Cheryl Foley

Cheryl Foley
Surety Bond Specialist

BID BOND

BID BOND

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that East Coast Marine Construction & Design, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 150 S. Palmetto Ave., Suite 201, Daytona Beach , FL 32114 , Tel.: (386) 366-0164 , (hereinafter called "PRINCIPAL"), and Employers Mutual Casualty Company , as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at P. O. BOX 712, DES MOINES, IA 50306 - 0712 , Tel: (515) 280-2511 (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of Five Percent of Amount Bid ---------- dollars and (-------)/100 ($---5%----), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated April 29 , 20 25 , for:

Project Name/Bid No.: CAUSEWAY BOAT RAMP AND PARK IMPROVEMENTS, ITB #25-12

Project Address: 81 Dunlawton Ave, Port Orange, FL 32127

Legal Description: See Attached

Description of Work:

Demolition and construction of new boat ramp, installation of aluminum gangway, floating concrete dock system and aluminum pedestrian railing installation, accessory docks and timber pier construction and various parking lot improvements.

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this 29th day of April , 20 25 , the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: East Coast Marine Construction & Design, Inc.

Signature

John Zemball / President
Corporate Officer & Title

ATTEST:

Signature

John Zemball
Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

PETER KOIB.

ATTEST:

Susan L. Reich
Signature

Susan L. Reich
Corporate Secretary (Affix Corporate Seal)

SURETY: Employers Mutual Casualty Company

Jeffrey W. Reich
Attorney-in-Fact (signature)

Jeffrey W. Reich, Attorney-In-Fact
Name & Title

Jeffrey W. Reich, FL Licensed Resident Agent
Name of Local Resident Agent

PO Box 712, Des Moines, IA 50306-0712
City, State, Zip

515-280-2511 Inquiries: 407-786-7770
Telephone:

A.M. Best No.: 002161 NAIC No.: 21415

STATE OF Florida

COUNTY OF Orange

Before me this day personally appeared Jeffrey W. Reich (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Employers Mutual Casualty Company (corporate surety) and that this person has been authorized by Employers Mutual Casualty Company (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Jeffrey W. Reich
Signature of Affiant Jeffrey W. Reich

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 29th day of April, 2025, by Jeffrey W. Reich and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Elizabeth Luu Karoly, Ex: 07/09/2026

Notary Public State of Florida
Elizabeth Luu Karoly
My Commission HH 283384
Expires 7/9/2026

END OF BID BOND

This document must be completed and returned with your Submittal

EMPLOYERS MUTUAL CASUALTY COMPANY
717 MULBERRY STREET, DES MOINES, IOWA 50309
STATEMENT OF ASSETS, LIABILITIES AND SURPLUS
AT DECEMBER 31, 2023

ASSETS

Bonds	$	2,326,386,235
Preferred Stocks		52,143,663
Common Stocks		1,560,797,020
Real Estate		137,947,934
Cash, Cash Equivalents and Short Term Investments		113,845,575
Other Invested Assets		137,182,728
Investment Income Due and Accrued		20,037,957
Premiums and Considerations		756,674,446
Reinsurance		49,004,298
Current Federal Income Tax Recoverable		12,011,733
Net Deferred Tax Asset		72,810,482
Other Assets		91,307,368
TOTAL ASSETS	$	5,330,149,439

LIABILITIES & SURPLUS

Losses	$	2,030,389,850
Reinsurance Payable on Paid Loss & Loss Adjustment Expenses		42,759,603
Loss Adjustment Expenses		392,916,208
Contingent Commissions		67,551,860
Other Expenses (Excluding Taxes, Licenses and Fees)		55,130,604
Taxes, Licenses and Fees (Excluding Federal Income Taxes)		15,001,557
Borrowed Money		58,850,833
Unearned Premiums		983,725,028
Ceded Reinsurance Premiums Payable (Net of Ceding Commissions)		10,861,455
Other Liabilities		102,618,974
TOTAL LIABILITIES		3,759,805,972
Unassigned Funds (Surplus)		1,470,343,467
Surplus Notes		100,000,000
Surplus as Regards Policyholders		1,570,343,467
TOTAL LIABILITIES & SURPLUS	$	5,330,149,439

I, Jeff Monson, Assistant VP of EMPLOYERS MUTUAL CASUALTY COMPANY, certify that the foregoing is a fair statement of Assets, Liabilities and Surplus of this Company, at the close of business, December 31, 2023, as reflected by its books and records and as reported in its statement on file with the Insurance Department of the State of Iowa.

EMPLOYERS MUTUAL CASUALTY COMPANY CORPORATE SEAL DES MOINES, IOWA

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the Company, this 14th day of March, 2024.

EMPLOYERS MUTUAL CASUALTY COMPANY

Jeff Monson

Jeff Monson
Assistant Vice President

EMPLOYERS MUTUAL CASUALTY COMPANY CORPORATE SEAL DES MOINES, IOWA

emc INSURANCE

P.O. Box 712 • Des Moines, Iowa 50306-0712

CERTIFICATE OF AUTHORITY INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation
4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

Jeffrey W. Reich

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond:

Surety Bond Number: Bid Bond
Principal : East Coast Marine Construction & Design, Inc.
Obligee : City of Port Orange, Florida

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 19th day of September, 2022.

Scott R. Jean, President & CEO
of Company 1, Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

Seals

ILLINOIS EMCASCO INSURANCE COMPANY CORPORATE SEAL IOWA
UNION INSURANCE COMPANY OF PROVIDENCE INCORPORATED 1863 IOWA
EMC PROPERTY & CASUALTY CO. INCORPORATED 1953 IOWA
EMCASCO INSURANCE COMPANY CORPORATE SEAL IOWA
DAKOTA FIRE INSURANCE COMPANY CORPORATE SEAL NORTH DAKOTA
EMPLOYERS MUTUAL CASUALTY CO. CORPORATE SEAL DES MOINES, IOWA

KATHY LOVERIDGE
Commission Number 780769
My Commission Expires
October 10, 2025

On this 19th day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 19th day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 29th day of April, 2025.

SEAL

Ryan J. Springer
Vice President

"For verification of the authenticity of the Power of Attorney you may call (515) 345-7548."

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/14/2025

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 have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kelly White & Associates Insurance, LLC 1622 Hickman Road Jacksonville FL 32216	**CONTACT NAME:** Crystal Pounders **PHONE (A/C, No, Ext):** 904-880-8881 **FAX (A/C, No):** **E-MAIL ADDRESS:** crystal@kwhiteinsurance.com
INSURED East Coast Marine Construction & Design, Inc. 150 S Palmetto Ave Suite 201, Daytona Beach FL 32114	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** INSURER A : Travelers Casualty Ins Co of America — 25674 INSURER B : St. Paul Mercury Insurance Company — 24791 INSURER C : Travelers Property & Casualty Company — 25674 INSURER D : American Interstate Ins Co — 31895 INSURER E : Travelers Casualty Ins Co of America INSURER F :

COVERAGES **CERTIFICATE NUMBER:** EAST25041412171201 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR X Contractual Liability X Marine General Liability GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:			ZOL91N57114	10/06/2024	10/06/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG P&I	$ 1,000,000 $ 50,000 $ 5000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 1,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			BA-2X285205	10/06/2024	10/06/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ 10,000 $
C	X UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $			ZOB81N58740	10/06/2024	10/06/2025	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: Y (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		AVWCFL3311652024	10/06/2024	10/06/2025	☐ PER STATUTE ☒ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	USL&H $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Rented/Leased Equipment			ZOL91N57114	10/06/2024	10/06/2025		300,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

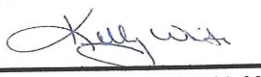
CERTIFICATE HOLDER

For Bid Purposes Only

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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CITY OF DAYTONA BEACH
Local Business Tax Receipt # BT-78164

THE CITY OF DAYTONA BEACH
301 S. Ridgewood Ave., Rm 127-B
DAYTONA BEACH, FL 32114

DEVELOPMENT SERVICES DEPARTMENT
Business Tax Division
Phone: 386-671-8280

Business Name: EAST COAST MARINE CONSTRUCTION & DESIGN

Location: 150 S Palmetto Ave DAYTONA BEACH, FL 32114

Business Type: Contractors General

STATE LIC# CGC1526550
STATE LIC# 82269

BT-78164	BT No
8/19/2024	Valid From
9/30/2025	Valid To
8/19/2024	Payment Date
$100.00	Fee Amt

Mail To:
EAST COAST MARINE CONSTRUCTION & DESIGN
150 S Palmetto Ave 201
DAYTONA BEACH FL 32114

2025

Local Business Tax Receipt

DISPLAY AT PLACE OF BUSINESS FOR PUBLIC INSPECTION
THE CITY DOES NOT CERTIFY OR IMPLY COMPETENCE OF BUSINESS.

CITY OF DAYTONA BEACH

BUS. TAX NO. BT-78164
THE CITY OF DAYTONA BEACH
301 S. Ridgewood Ave., Rm 127-B
DAYTONA BEACH, FL 32114

EAST COAST MARINE CONSTRUCTION & DESIGN
150 S Palmetto Ave DAYTONA BEACH, FL 32114

PAID RECEIPT

Receipt Date	Charge Name	Charge Amount	Tender Type
8/19/2024	Contractors General	$100.00	Check
		Total $100.00	

00000BT78164000000000000

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.

Name (as shown on your income tax return)
East Coast Marine Construction & Design

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)
150 S. Palmetto Ave. Suite 201

Requester's name and address (optional)

City, state, and ZIP code
Daytona Beach, Fl. 32114

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
: :

or

Employer identification number
82 : 4168719

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ [signature] Date ▶ 2/11/25

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

ZEMBALL, JOHN W III

EAST COAST MARINE CONSTRUCTION & DESIGN, INC.
150 S. PALMETTO AVE STE 201
DAYTONA BEACH FL 32114

LICENSE NUMBER: CGC1526550

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com

ISSUED: 07/25/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



Detail by Entity Name

Florida Profit Corporation
EAST COAST MARINE CONSTRUCTION & DESIGN, INC.

Filing Information

Document Number	P18000014904
FEI/EIN Number	82-4168719
Date Filed	02/13/2018
State	FL
Status	ACTIVE

Principal Address

150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Changed: 04/21/2020

Mailing Address

150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Changed: 04/21/2020

Registered Agent Name & Address

ZEMBALL, JOHN
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Address Changed: 04/21/2020

Officer/Director Detail

Name & Address

Title PRESIDENT

ZEMBALL, JOHN
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Title VP

Fletcher, Michael
150 S. Palmetto Avenue
Suite 201
Daytona BEACH, FL 32114

Annual Reports

Report Year	Filed Date
2023	02/23/2023
2024	04/04/2024
2025	02/12/2025

Document Images

02/12/2025 -- ANNUAL REPORT	View image in PDF format
04/04/2024 -- ANNUAL REPORT	View image in PDF format
02/23/2023 -- ANNUAL REPORT	View image in PDF format
03/08/2022 -- ANNUAL REPORT	View image in PDF format
02/18/2021 -- ANNUAL REPORT	View image in PDF format
04/21/2020 -- ANNUAL REPORT	View image in PDF format
03/27/2019 -- ANNUAL REPORT	View image in PDF format
02/13/2018 -- Domestic Profit	View image in PDF format

Florida Department of State, Division of Corporations

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT #_____

☑ **I hereby certify that I do not utilize an employee leasing company or employ leased employees. I further agree to notify the City in the event these circumstances change.**

OR

☐ **I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.**

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing agreement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the workers' compensation coverage.

Name of Contractor: East Coast Marine Construction & Design

Signature of Owner/Officer: _____

Title: President Date: 5/13/25

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of Florida

County of Volusia

I, John Zemball, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the East Coast Marine Construction & Design Company, under the terms of Policy Number AWCFL331165 2024 for a period from 10/06, 2024 to 10/06, 2025.

WITNESS:

By:

Name: Peter Kolb

CONTRACTOR:

Company: East Coast Marine Construction & Design

By:

Name/Title: John Zemball / President

Sworn to/Affirmed and subscribed before me this 13th day of May, 2025, by John W. Zemball, who is personally known to me or who produced Personally known as identification.

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

NOTARY PUBLIC – STATE OF

Type or Print Name: Michael J. Fletch

Commission No.: HH 531840

Commission Expires: 9/20/28

(Seal)

IMPORTANT: This certificate must be completed and returned by the Awarded Proposer upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF FLORIDA §
§
COUNTY OF VOLUSIA §

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is John Zemball. I am over the age of Twenty-one years old. I am the President (Title) of East Coast Marine Construction & Design (Business Name), a non- governmental entity which does business in the State of Florida, hereinafter called the "Entity."
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: 5/13/, 2025

Signed: _____
Print Name: John Zemball
Title: President

SUBSCRIBED AND SWORN before me by means of [_XX_] physical presence or [__] online notarization on the 13th day of May, 2025 by John W. Zemball as President on behalf of East Coast Marine Construction & Design who is personally known to me or who has produced Personally known as identification.

(Notary Seal)

Notary Public State of Florida
Michael J. Fletcher
My Commission HH 531840
Expires 9/20/2028

_____
Notary Public, State of Florida
Printed name, commission and expiration of commission term

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (B7) Approval of Renewal No. 2 of the Interlocal Agreement with the Utilities Commission of New Smyrna Beach for Potable Water and Reclaimed Services

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure 3 - Quality of Life 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve Renewal No. 2 of the Interlocal Agreement with the Utilities Commission of New Smyrna Beach, and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: On July 19, 2016, the City entered into an Interlocal Agreement with the Utilities Commission of New Smyrna Beach under which potable and treated reclaimed water can be exchanged for the facilitation and management of the interconnected systems. Each party agrees to transfer and accept excess treated potable water and excess treated reclaimed water effluent from each other pursuant to the terms under the agreement. The parties agree that potable water transfer shall only occur for the purpose of emergency or short-term capacity needs.

City Council approved the first renewal term of the agreement on July 21, 2020, for an additional four (4) years. A second renewal term for an additional four years is now being requested from the City Council. Due to an administration change with the Utilities Commission of New Smyrna Beach, the renewal was not executed in 2024 as originally anticipated.

Notwithstanding the date of execution, the term of this renewal is for four (4) years starting July 19, 2024, to July 18, 2028. The agreement can be renewed for successive four-year terms provided both parties are in agreement. Either party may cancel this agreement with six months prior notification.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Renewal No. 2 for Interlocal w UCNSB	Extension No. 2 for Interlocal w UCNSB.pdf

Steve Parnell Created/Initiated - 5/16/2025

Christopher Wall	Approved - 5/16/2025
Steve Parnell	Approved - 5/19/2025
Matthew Jones	Approved - 5/23/2025
Wayne Clark	Final Approval - 5/23/2025

RENEWAL AGREEMENT NO. 2

THIS RENEWAL AGREEMENT NO. 2 ("Agreement") 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 (the "City"), and **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH FLORIDA, A FLORIDA MUNICIPAL CORPORATION** ("Commission").The City and the Commission are hereinafter collectively referred to as the "Parties."

WHEREAS, the City and Commission, entered into a Interlocal Agreement dated July 19, 2016 for the facilitation and management of the Parties' infrastructure for the purpose of exchange of potable and treated reclaimed water, with an initial four-year term commencing on July 19, 2016 and continuing until July 18, 2020 ("Interlocal"), which provides for additional four (4) year renewal periods, subject to mutual agreement of the Parties; and

WHEREAS, the Parties exercised the first renewal period of the Interlocal for a term commencing on July 19, 2020 and continuing until July 18, 2024, and

WHEREAS, the Parties hereby desire to exercise a second renewal period of the Interlocal for a term commencing on July 19, 2024 and continuing until July 18, 2028, and

WHEREAS, the City of Port Orange has determined that the execution of this Agreement is beneficial to the citizens of the City of Port Orange.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.

2. *Term*. The term of the Interlocal is hereby renewed for an additional four (4) year period. Notwithstanding the date of execution, the Interlocal renewal shall commence on July 19, 2024 and continue until July 18, 2028.

3. *Counterparts*. 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 the Commission and the City until the City signs this Agreement.

4. All other terms and conditions of the Interlocal shall remain in full force and effect.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Agreement on the day and year stated hereinafter.

Signed, Sealed and Delivered in the presence of:

CITY OF PORT ORANGE

By: _____
Scott Stiltner, Mayor

Date: _____

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Date: _____

Approved as to form and correctness:

By: _____
Shannon K. Balmer, Senior Assistant City Attorney

UTILITIES COMMISSION, CITY OF
NEW SMYRNA BEACH, FLORIDA

By: _____

Date: _____

Attest: _____

Date: _____

Approved as to form and correctness:

By: _____
COMMISSION ATTORNEY

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (B8) Resolution No. 25-30 - Budget Transfer for 413 Herbert Street Purchase - Depot Park

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 25-30.

SUMMARY: On May 20, Council approved the purchase of land adjacent to Depot Park with funding from the Wetland Mitigation Fund. Staff requests approval to appropriate $230,000 from the $2.8 million available fund balance in order to complete this purchase.

PRESENTER: Mark Simpson

ATTACHMENTS:

1.	Resolution No 25-30 with exhibit	Resolution No 25-30 with exhibit.pdf

Amanda Bonin	Created/Initiated - 5/22/2025
Mark Simpson	Approved - 5/27/2025
Matthew Jones	Approved - 5/27/2025
Wayne Clark	Final Approval - 5/27/2025

RESOLUTION NO. 25-30

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROPRIATING OPERATING, AND CAPITAL FUNDS FOR THE FISCAL YEAR 2024-2025 BUDGET; TO APPROPRIATE FUNDS FOR THE ACQUISITION OF REAL PROPERTY LOCATED AT 413 HERBERT STREET FOR THE EXPANSION OF DEPOT PARK FROM EXISTING AVAILABLE FUND EQUITY IN THE WETLAND MITIGATION FUND BALANCE (416) IN THE AMOUNT OF $230,000 SETTING FORTH REVENUES AND EXPENDITURES; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to budget for the designation of funds from the existing available fund equity in the Wetland Mitigation fund balance (416) to the appropriate capital asset account within the Wetland Mitigation fund to fund the acquisition of real property located at 413 Herbert Street, Port Orange, Volusia County, Florida for the expansion of Depot Park; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. The funds for the City operating and capital items are hereby appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues and corresponding expenditures for the designated project.

Section 2. The budget item adopted in the preceding section shall govern the expenditures relating to such items for the City during the ensuing fiscal year effective October 1, 2024, through September 30, 2025.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be affected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 4. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

Section 5. This resolution shall become effective immediately upon adoption.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin Fenwick, MMC, City Clerk

Adopted on the _____day of _____

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

Exhibit "A" DETAIL FOR RES. 25-30
FY25 BUDGET ADJUSTMENT REQUEST

FUND	ACCOUNT DESCRIPTION		ADJUSTMENT REQUEST	DESCRIPTION
GENERAL FUND - 001				
	TRANSFER IN - FUND 416		230,000	TRANSFER IN
		REVENUES	230,000	
	CAPITAL OUTLAY/LAND - PARKS & REC		230,000	413 HERBERT STREET LAND PURCHASE
		EXPENDITURES	230,000	
WETLAND MITIGATION 416				
	APPROPRIATED FUND BALANCE		230,000	APPROPRIATED FUND BALANCE
		REVENUES	230,000	
	TRANSFER OUT - FUND 001		230,000	TRANSFER OUT
		EXPENDITURES	230,000	

REVENUES	460,000
EXPENDITURES	460,000
VARIANCE	-

PORT ORANGE
FLORIDA

Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2024-25

Fund	Description	Adopted Resolution 24-38	Resolution 24-47	Resolution 25-03	Resolution 25-11	Resolution 25-20	Resolution 25-23	Resolution 25-30	Amended Budget
001	General Fund	$ 61,190,570	4,061,756	$1,671,610	$ 84,030		$ 269,000	$ 230,000	**$ 67,506,966**
010	National Opioid Litigation	44,687	83,445						**$ 128,132**
011	Recreation Scholarship	22,450	-						**$ 22,450**
019	Federal Disaster Fund	135,895	3,061,737						**$ 3,197,632**
102	Tax Increment - Eastport	633,196	-						**$ 633,196**
103	Tax Increment - Town Center	431,297	-						**$ 431,297**
106	Recreational Facilities	246,700	32,363						**$ 279,063**
109	Building & Inspections	2,649,016	-						**$ 2,649,016**
199	Grant Special Revenue	5,134,124	-						**$ 5,134,124**
214	Debt Services GO	901,838	-						**$ 901,838**
217	Debt Services Eastport Tax Note	234,511	-						**$ 234,511**
218	Debt Services Town Center Bonds	402,369	-						**$ 402,369**
220	Debt Services Bonds	1,147,356	-						**$ 1,147,356**
221	2025 GO Bond Debt	30,000,000	-						**$ 30,000,000**
301	Capital Projects	7,475,829	3,256,707						**$ 10,732,536**
310	Police Impact Fee	109,785	-						**$ 109,785**
311	Fire Impact Fee	72,660	-	27,000					**$ 99,660**
312	Transportation Impact Fee	273,530	-						**$ 273,530**
313	Recreation Impact Fee	212,774	-						**$ 212,774**
317	General Capital Replacement	5,827,865	8,761,063	84,414	84,030		300,000		**$ 15,057,372**
321	Parks Bond Capital Projects	10,000,000	-						**$ 10,000,000**
401	Water/Sewer	31,644,162	49,190,543	69,675			200,000		**$ 81,104,380**
403	Water/Sewer R&R	5,450,000	48,053,563	69,675					**$ 53,573,238**
405	Water Impact Fee	679,627	-				200,000		**$ 879,627**
410	Solid Waste	10,708,138	-						**$ 10,708,138**
412	Stormwater Utility	5,988,199	6,618,675	(841,571)			961,109		**$ 12,726,412**
413	Stormwater Capital	9,252,488	6,954,949	880,039			961,109		**$ 18,048,585**
414	Drainage Bond Sinking	699,004	-						**$ 699,004**
416	Wetland Mitigation	96,968	-					230,000	**$ 326,968**
418	SRF Debt Service	784,846	-						**$ 784,846**
420	Forestry	319,536	430,325				355,000		**$ 1,104,861**
450	Golf Course Operating	2,619,067	-	300,000					**$ 2,919,067**
501	Information Technology	3,833,844	25,728						**$ 3,859,572**
503	Fleet Maintenance	1,693,226	-						**$ 1,693,226**
504	Risk Management	2,238,409	-						**$ 2,238,409**
505	Lease & Replacement	2,466,256	2,154,663	411,805			798,504		**$ 5,831,228**
606	Police Benefit Trust	4,500	-						**$ 4,500**
607	Police Forfeiture	70,000	-			95,000			**$ 165,000**
615	Police Education Trust	10,000	-						**$ 10,000**
625	Federal Police Forfeiture	15,000	-						**$ 15,000**
	Grand Total:	**$ 205,719,722**	**$ 132,685,517**	**$2,672,647**	**$ 168,060**	**$ 95,000**	**$ 4,044,722**	**$ 460,000**	**$ 345,845,668**

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

	2/29/2024	3/31/2024	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025
REVENUES													
Green Fees & Cart Fees	199,662.20	236,965.68	201,528.02	160,539.30	138,029.42	132,453.74	104,152.58	119,572.75	84,939.77	162,828.62	148,571.36	176,692.72	220,341.06
Merchandise	25,565.08	30,766.90	45,649.17	27,605.84	43,083.89	23,220.61	19,083.92	30,402.90	11,351.54	30,302.30	25,406.46	21,908.09	31,045.07
Other Pro Shop	5,298.78	6,024.39	3,778.17	2,763.17	2,109.98	2,034.39	1,774.39	1,475.00	1,242.45	2,683.00	1,960.00	1,516.00	6,047.56
Range	6,542.87	7,860.89	8,649.11	10,114.34	7,779.70	5,865.03	5,444.98	6,184.61	2,296.51	6,294.13	4,999.31	6,495.52	8,834.17
Other Operating Revenues	3,764.70	4,508.71	3,926.85	3,317.07	3,008.00	2,844.91	2,443.06	2,340.97	1,746.52	3,555.14	3,125.03	3,373.19	4,085.24
TOTAL REVENUE	240,833.63	286,126.57	263,531.32	204,339.72	194,010.99	166,418.68	132,898.93	159,976.23	101,576.79	205,663.19	184,062.16	209,985.52	270,353.10
COST OF SALES													
Merchandise	18,263.19	18,707.82	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76
TOTAL COGS	18,263.19	18,707.82	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76
PAYROLL													
Course and Grounds	39,770.32	38,907.54	41,749.05	44,539.06	40,260.93	47,477.30	43,491.45	45,854.54	49,171.10	47,569.72	47,302.12	49,942.73	45,419.67
Carts, Range, Starters, Etc.	16,166.47	18,497.18	19,834.24	18,376.10	16,665.60	12,785.16	12,762.52	12,533.41	11,201.65	15,165.97	15,101.81	17,089.85	16,397.73
Pro Shop	14,668.39	15,759.94	14,857.36	14,896.49	14,894.38	14,983.79	11,887.90	13,204.32	11,174.34	14,631.28	12,897.27	13,155.84	12,775.52
General and Administrative	18,442.15	16,612.13	17,416.48	18,692.70	17,254.52	17,950.28	18,018.61	23,998.53	18,349.71	23,543.09	13,589.38	18,795.31	17,191.39
Marketing	10,218.74	7,211.79	8,417.25	8,851.04	8,203.37	8,185.65	8,002.83	10,229.48	7,290.30	8,236.74	8,720.47	8,797.98	7,703.93
TOTAL PAYROLL	99,266.07	96,988.58	102,274.38	105,355.39	97,278.80	101,382.18	94,163.31	105,820.28	97,187.10	109,146.80	97,611.05	107,781.71	99,488.24
OPERATING EXPENSES													
Course and Grounds	26,789.69	31,433.74	31,255.02	44,865.79	20,776.66	28,438.50	31,391.29	19,591.18	15,230.30	23,835.93	14,845.31	17,323.90	20,072.62
Carts, Range, Starters, Etc.	7,859.49	11,360.92	9,330.33	8,190.84	7,821.09	11,775.57	8,367.17	7,669.52	715.08	738.69	5,463.29	1,135.40	825.83
Pro Shop	6,002.20	2,227.99	325.74	62.85	922.55	872.50	417.60	(52.60)	630.32	(543.75)	1,096.88	1,650.97	6,303.34
General and Administrative	34,006.78	29,024.74	31,006.61	28,027.94	33,434.87	26,357.30	28,109.87	30,589.93	27,593.44	30,674.23	38,163.82	33,897.51	34,585.54
Marketing	444.65	1,492.31	3,855.12	1,570.82	1,962.39	958.33	1,188.86	2,099.14	466.02	1,361.27	1,465.52	850.98	432.66
TOTAL OPERATING EXPENSES	75,102.81	75,539.70	75,772.82	82,718.24	64,917.56	68,402.20	69,474.79	59,897.17	44,635.16	56,066.37	61,034.82	54,858.76	62,219.99
TOTAL EXPENSES	192,632.07	191,236.10	208,504.82	210,991.36	197,740.02	179,175.67	177,125.68	189,677.42	149,807.70	188,766.33	176,280.47	173,983.88	186,524.99
EBITDA	48,201.56	94,890.47	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

	2/29/2024	3/31/2024	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025
EBITDA	48,201.56	94,890.47	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11
MANAGEMENT FEES	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)
Interest Expense - Debt													
Interest Expense - Leases													
Interest Income													
TOTAL FINANCING ACTIVITY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OTHER INCOME (EXPENSE)													
Non-Operating Revenue													
Transfers from County													
Depreciation & Amortization	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
Incentive Compensation													
Partnership Income/(Loss)													
Gain/(Loss) On Disposal Of Assets													
Other Expenses / Capital Reserve													
Taxes													
TOTAL OTHER INCOME (EXPENSE)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
NET INCOME	41,514.03	88,202.94	48,338.97	(13,339.17)	(10,416.56)	(19,444.52)	(50,914.28)	(36,388.72)	(55,116.20)	10,011.57	896.40	29,116.35	76,942.82
Paid Rounds	4,156.00	5,059.00	4,469.00	3,726.00	3,320.00	3,124.00	2,583.00	2,639.00	1,856.00	3,473.00	3,089.00	3,355.00	4,177.00
Annual Pass Rounds	416.00	425.00	405.00	322.00	317.00	354.00	371.00	298.00	207.00	404.00	416.00	496.00	535.00
Other Rounds	243.00	318.00	290.00	253.00	237.00	285.00	245.00	238.00	179.00	239.00	256.00	242.00	316.00
Total Rounds	4,815.00	5,802.00	5,164.00	4,301.00	3,874.00	3,763.00	3,199.00	3,175.00	2,242.00	4,116.00	3,761.00	4,093.00	5,028.00
Revenue/Paid Rounds	57.95	56.56	58.97	54.84	58.44	53.27	51.45	60.62	54.73	59.22	59.59	62.59	64.72
Revenue/Total Rounds	50.02	49.32	51.03	47.51	50.08	44.23	41.54	50.39	45.31	49.97	48.94	51.30	53.77

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

	2/28/2025	9/30/2024	2/29/2024
ASSETS			
CURRENT ASSETS:			
Cash			
Cash - Depository	339,682	305,463	336,964
Cash - Payroll	38,584	30,096	74,079
Cash - Manual Checks	850	850	850
Cash - Housebank & Other	500	500	500
Total Cash	379,616	336,909	412,393
Accounts Receivable			
A/R Member	1,820	1,543	6,893
Total Accounts Recievable	1,820	1,543	6,893
Other Current Assets			
Inventory - Merchandise	127,319	105,046	132,249
Prepaid Insurance	39,264	48,286	17,533
Prepaid Exp - Other	30,958	11,397	35,400
Total Other Current Assets	197,541	164,729	185,183
TOTAL CURRENT ASSETS	578,976	503,180	604,469
PROPERTY, PLANT AND EQUIPMENT:			
Buildings & Improvements	30,598	30,598	30,598
Machinery & Equipment	5,550	5,550	5,550
Property Plant and Equipment	36,148	36,148	36,148
Accumulated Depreciation	(33,885)	(33,407)	(32,739)
TOTAL PROPERTY, PLANT AND EQUIPMENT	2,263	2,741	3,409
TOTAL ASSETS	581,239	505,921	607,878

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

	2/28/2025	9/30/2024	2/29/2024
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accts Pay - Trade	94,726	44,253	153,530
Accts Pay - Other	185,360	202,954	210,191
Accrued Expenses	498	1,097	403
Accrued Payroll	38,632	49,798	68,654
Accrued Taxes	16,224	8,452	14,100
Deferred Revenue	183,945	199,364	173,975
TOTAL CURRENT LIBILITIES	519,386	505,918	620,853
TOTAL LIABILITIES	519,386	505,918	620,853
STOCKHOLDER'S EQUITY			
Retained Earnings	61,854	3	(12,975)
Net Retained Earnings	61,854	3	(12,975)
Stockholders Equity	61,854	3	(12,975)
TOTAL STOCKHOLDER'S EQUITY	61,854	3	(12,975)
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	581,239	505,921	607,878

The Golf Club at Cypress Head
Comparative Income Statement
For the Five Months Ending Friday, February 28, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
REVENUES								
Green Fees & Cart Fees	199,662	762,823	1,856,064	41.%	220,341	793,374	1,963,221	40.%
Merchandise	25,565	120,532	340,345	35.%	31,045	120,013	312,000	38.%
Other Pro Shop	5,299	13,452	33,412	40.%	6,048	13,449	44,319	30.%
Range	6,543	24,337	76,236	32.%	8,834	28,920	80,609	36.%
Other Operating Revenues	3,765	15,414	37,803	41.%	4,085	15,885	38,951	41.%
TOTAL REVENUE	240,834	936,558	2,343,861	40.%	270,353	971,641	2,439,100	40.%
COST OF SALES								
Merchandise	18,263	85,003	239,469	35.%	24,817	85,333	213,650	40.%
TOTAL COGS	18,263	85,003	239,469	35.%	24,817	85,333	213,650	40.%
COGS - Merchandise %	71.%	71.%	70.%	101.%	80.%	71.%	68.%	104.%
PAYROLL								
Course and Grounds	39,770	201,446	503,726	40.%	45,420	239,405	561,966	43.%
Carts, Range, Starters, Etc.	16,166	74,414	185,868	40.%	16,398	74,957	221,847	34.%
Pro Shop	14,668	65,276	165,760	39.%	12,776	64,634	177,463	36.%
General and Administrative	18,442	92,888	222,831	42.%	17,191	91,469	216,683	42.%
Marketing	10,219	40,146	99,247	40.%	7,704	40,749	97,743	42.%
TOTAL PAYROLL	99,266	474,169	1,177,432	40.%	99,488	511,215	1,275,702	40.%
OPERATING EXPENSES								
Course and Grounds	26,790	134,193	341,945	39.%	20,073	91,308	374,055	24.%
Carts, Range, Starters, Etc.	7,859	42,511	107,026	40.%	826	8,878	105,917	8.%
Pro Shop	6,002	16,141	20,918	77.%	6,303	9,138	16,490	55.%
General and Administrative	34,007	156,770	363,322	43.%	34,586	164,915	336,073	49.%
Marketing	445	7,309	20,436	36.%	433	4,576	26,000	18.%
TOTAL OPERATING EXPENSES	75,103	356,925	853,647	42.%	62,220	278,815	858,535	32.%
TOTAL EXPENSES	192,632	916,097	2,270,548	40.%	186,525	875,363	2,347,887	37.%

The Golf Club at Cypress Head
Comparative Income Statement
For the Five Months Ending Friday, February 28, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
OTHER INCOME (EXPENSE)								
MANAGEMENT FEES	(6,592)	(32,960)	(79,104)	42.%	(6,790)	(33,949)	(81,480)	42.%
Depreciation & Amortization	(96)	(478)	(1,146)	42.%	(96)	(478)	(1,146)	42.%
TOTAL OTHER INCOME (EXPENSE)	(6,688)	(33,438)	(80,250)	42.%	(6,885)	(34,426)	(82,626)	42.%
NET INCOME	41,514	(12,977)	(6,938)	187.%	76,943	61,851	8,587	720.%
Paid Rounds	4,156	16,624			4,177	15,950	41,475	38.%
Annual Pass Rounds	416	1,794			535	2,058	4,907	42.%
Other Rounds	243	1,235			316	1,232	2,739	45.%
Total Rounds	4,815	19,653			5,028	19,240	49,121	39.%
Revenue/Paid Rounds	58	56			65	61	59	104.%
Revenue/Total Rounds	50	48			54	51	50	102.%

The Golf Club at Cypress Head
Course Cash Flow Report
Friday, February 28, 2025

	February	YTD
EBITDA	$83,828.11	$96,277.39
Management Fee Expense	(6,789.76)	(33,948.80)
Depreciation & Amortization	(95.53)	(477.65)
Net Income	76,942.82	61,850.94
Working Capital Changes		
Inventory	(10,777.59)	(22,273.20)
Receivables	(1,548.33)	(277.36)
Payables	4,037.00	50,473.18
Due to from the City	(497.78)	(17,593.46)
Prepaids	(1,416.56)	(10,539.24)
Accrued Liabilities	3,341.74	(3,993.35)
Other Liabilities	(14,142.91)	(15,418.45)
Depreciation & Amortization	95.53	477.65
Operating Cash Flow	56,033.92	42,706.71
Investing Cash Flows		
Financing Cash Flow		
Net Cash Flows	56,033.92	42,706.71
Beginning Cash	323,581.65	336,908.86
Net Cash Flows	56,033.92	42,706.71
Ending Cash	379,615.57	379,615.57

The Golf Club at Cypress Head
Summary of All Units
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
142,989	147,244	97.%	131,595	109.%	Green Fees	492,745	563,648	87.%	484,067	102.%	1,259,601	1,183,646
77,352	73,858	105.%	68,067	114.%	Cart Fee	300,628	296,094	102.%	278,756	108.%	703,621	702,969
31,045	32,000	97.%	25,565	121.%	Merchandise	120,013	122,000	98.%	120,532	100.%	312,000	339,827
3,085	2,710	114.%	2,710	114.%	Handicap Fee	3,625	3,780	96.%	3,755	97.%	7,700	6,715
1,345	2,000	67.%	1,970	68.%	Lessons	5,001	6,000	83.%	5,715	88.%	26,850	13,466
1,618	829	195.%	619	261.%	Rental Clubs	4,823	4,199	115.%	3,983	121.%	9,769	13,227
8,834	6,643	133.%	6,543	135.%	Range	28,920	25,837	112.%	24,337	119.%	80,609	80,818
4,085	3,767	108.%	3,765	109.%	City Surcharge R & R	15,885	15,420	103.%	15,414	103.%	38,951	38,275
270,353	269,051	100.%	240,834	112.%	Total Revenues	971,641	1,036,977	94.%	936,558	104.%	2,439,100	2,378,943
					COST OF GOODS SOLD							
24,817	21,760	114.%	18,263	136.%	COGS - Merchandise	85,333	83,160	103.%	85,003	100.%	213,650	239,799
24,817	21,760	114.%	18,263	136.%	Total COGS	85,333	83,160	103.%	85,003	100.%	213,650	239,799
245,536	247,291	99.%	222,570	110.%	GROSS MARGIN	886,307	953,817	93.%	851,555	104.%	2,225,450	2,139,144
80.%	68.%	118.%	71.%	113.%	COGS - Merchandise %	71.%	68.%	104.%	71.%	100.%	68.%	832.%
					PAYROLL							
34,749	36,614	95.%	37,347	93.%	Gross Payroll - Salaried	186,208	183,072	102.%	182,512	102.%	439,372	453,515
49,396	49,444	100.%	41,203	120.%	Gross Payroll - Hourly	247,344	265,843	93.%	212,285	117.%	646,520	583,054
84,144	86,058	98.%	78,550	107.%	S/T Wages	433,551	448,914	97.%	394,796	110.%	1,085,892	1,036,569
6,208	6,583	94.%	5,774	108.%	Payroll Tax - FICA	32,377	34,342	94.%	30,457	106.%	83,071	76,588
368	516	71.%	438	84.%	Payroll Tax - UC	1,349	1,306	103.%	1,347	100.%	2,873	2,689
1,459	932	157.%	2,130	68.%	Payroll Tax - WC	7,392	4,862	152.%	7,888	94.%	12,105	18,604
7,309	7,521	97.%	12,374	59.%	Benefits	36,545	37,642	97.%	39,682	92.%	91,762	80,027
15,344	15,552	99.%	20,717	74.%	S/T Adders	77,664	78,152	99.%	79,373	98.%	189,810	177,909
99,488	101,611	98.%	99,266	100.%	TOTAL PAYROLL	511,215	527,067	97.%	474,169	108.%	1,275,702	1,214,478
					OPERATING EXPENSES							
0	0	0.%	6	0.%	Cart Supplies	210	300	70.%	285	74.%	450	413
1,258	800	157.%	650	194.%	Chemicals	4,838	4,000	121.%	3,632	133.%	9,600	8,704
716	600	119.%	204	350.%	Course Accessories	3,692	1,800	205.%	1,539	240.%	5,600	6,833
1,954	4,000	49.%	1,283	152.%	Fertilizer	25,023	22,100	113.%	18,978	132.%	60,100	50,243
0	0	0.%	0	0.%	Flowers/Decor	0	700	0.%	60	0.%	2,100	77
840	1,600	53.%	1,553	54.%	Fuel	7,171	7,700	93.%	7,300	98.%	21,100	18,574
342	0	0.%	1,259	27.%	Fungicides	4,684	4,600	102.%	4,485	104.%	6,600	6,766
9,477	7,000	135.%	6,801	139.%	Herbicides	9,273	14,400	64.%	12,833	72.%	35,900	32,061
0	0	0.%	1,062	0.%	Insecticides	(1,338)	0	0.%	4,517	(30.%)	12,800	2,780
681	50	1362.%	0	0.%	Janitorial Supplies	2,492	1,300	192.%	1,280	195.%	3,600	6,015
0	0	0.%	0	0.%	Laundry/Uniforms	180	400	45.%	42	434.%	575	180
247	400	62.%	415	60.%	Office Supplies	2,785	2,300	121.%	2,313	120.%	4,450	6,537
0	0	0.%	0	0.%	Printing	1,348	1,900	71.%	1,598	84.%	3,100	2,258
0	0	0.%	0	0.%	Range Balls	3,625	0	0.%	0	0.%	6,500	10,500
0	0	0.%	0	0.%	Range Equipment	1,111	400	278.%	0	0.%	1,000	2,493
0	200	0.%	0	0.%	Range Expenses	98	1,200	8.%	1,182	8.%	2,175	734
0	1,000	0.%	403	0.%	Sand/Topdress	4,697	5,000	94.%	4,297	109.%	15,000	13,865
0	0	0.%	0	0.%	Seeds/Trees	2,995	5,000	60.%	3,520	85.%	7,900	4,895
158	0	0.%	0	0.%	Small Tools	506	600	84.%	0	0.%	1,800	872
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
445	100	445.%	0	0.%	Supplies	1,446	1,210	120.%	3,829	38.%	3,240	3,307
0	50	0.%	55	0.%	Tournament Expense	372	2,150	17.%	3,474	11.%	3,050	2,013
257	150	171.%	142	181.%	Alarm System	1,122	750	150.%	710	158.%	1,900	2,580
0	0	0.%	0	0.%	Cart Repairs	402	50	804.%	47	857.%	750	699
3,592	1,150	312.%	4,156	86.%	Computer Service	11,847	5,750	206.%	8,838	134.%	13,800	25,295
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	5,000	5,500	91.%	5,075	99.%	13,200	12,000
2,630	500	526.%	3,381	78.%	Guest Relations	2,630	2,160	122.%	5,040	52.%	2,360	3,781
5,960	6,000	99.%	5,947	100.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
175	540	32.%	175	100.%	Irrigation	4,383	2,700	162.%	700	626.%	6,480	9,961
0	0	0.%	0	0.%	Lesson Expense	0	600	0.%	583	0.%	1,200	0
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
0	0	0.%	0	0.%	Repair & Maint - Paths	838	2,000	42.%	2,901	29.%	4,000	1,677
2,447	2,450	100.%	2,911	84.%	Repair & Maint - Equipment	10,933	11,950	91.%	9,906	110.%	29,900	34,494
965	400	241.%	474	204.%	Repair & Maint - Building	6,880	2,000	344.%	7,210	95.%	4,800	10,254

The Golf Club at Cypress Head
Summary of All Units
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
0	7,141	0.%	7,141	0.%	Cart Lease	0	35,705	0.%	35,705	0.%	85,692	49,987
185	9,945	2.%	9,945	2.%	Equipment Lease	925	49,725	2.%	49,725	2.%	119,340	73,046
206	206	100.%	206	100.%	Off-Site Storage	824	1,030	80.%	1,030	80.%	2,472	2,266
972	950	102.%	953	102.%	Utilities - Electric	4,602	4,750	97.%	4,747	97.%	11,400	11,395
4,240	3,800	112.%	3,733	114.%	Utilities - Other	20,609	19,000	108.%	19,136	108.%	45,600	53,204
184	200	92.%	199	92.%	Utilities - Telephone/Fax	671	1,000	67.%	995	67.%	2,400	2,055
341	225	152.%	361	94.%	Utilities - Water	1,475	1,125	131.%	1,342	110.%	2,700	3,511
0	0	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,000	121.%	0	0.%	2,000	2,345
0	65	0.%	0	0.%	Adv/Promo - Promotional	342	405	84.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
0	1,000	0.%	0	0.%	Adv/Promo - Direct Mail	0	2,000	0.%	0	0.%	3,000	0
0	0	0.%	0	0.%	Adv/Promo - Special Events	0	250	0.%	0	0.%	500	0
433	500	87.%	445	97.%	Adv/Promo - Mktg/Bus Dev	1,529	2,500	61.%	7,309	21.%	6,000	8,685
0	0	0.%	0	0.%	Adv/Promo - Radio/TV	0	2,400	0.%	0	0.%	5,000	1,158
0	800	0.%	0	0.%	Adv/Promo - Website	1,500	3,400	44.%	0	0.%	8,000	4,250
505	500	101.%	457	111.%	Bank Charges	2,088	1,700	123.%	1,630	128.%	4,200	4,399
64	0	0.%	(48)	(132.%)	Cash Short/(Over)	53	0	0.%	(689)	(8.%)	0	(357)
240	330	73.%	240	100.%	Cell Phone	1,200	1,650	73.%	1,200	100.%	3,960	2,880
4,085	3,767	108.%	3,765	109.%	City Surcharge R & R	15,885	15,420	103.%	15,414	103.%	38,951	38,275
5,166	5,000	103.%	5,049	102.%	Credit Card Discounts	24,732	25,000	99.%	23,963	103.%	60,000	61,073
0	0	0.%	0	0.%	Donations	92	0	0.%	0	0.%	0	92
0	0	0.%	0	0.%	Dues & Subscriptions	285	540	53.%	540	53.%	1,140	2,281
0	0	0.%	0	0.%	Education & Training	0	465	0.%	1,067	0.%	785	295
599	50	1198.%	(324)	(185.%)	Employee Relations	5,907	5,900	100.%	7,436	79.%	6,550	8,276
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
9,985	10,200	98.%	9,213	108.%	Insurance Expense	49,924	51,000	98.%	46,067	108.%	122,400	116,635
260	0	0.%	0	0.%	Member Relations	347	100	347.%	321	108.%	900	1,202
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
394	500	79.%	500	79.%	Payroll Processing Fee	2,435	2,450	99.%	2,494	98.%	5,650	6,091
322	100	322.%	113	283.%	Postage/Shipping	1,074	400	268.%	739	145.%	1,100	2,063
(30)	(30)	100.%	(30)	100.%	Tax/Licenses/Fees	550	(150)	(367.%)	(150)	(367.%)	(285)	530
925	1,500	62.%	1,308	71.%	Travel - Other	3,236	1,650	196.%	1,712	189.%	2,000	6,001
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
62,220	74,839	83.%	75,103	83.%	TOTAL OPERATING EXPENSES	278,815	360,435	77.%	356,925	78.%	858,535	775,538
83,828	70,841	118.%	48,202	174.%	EBITDA	96,277	66,315	145.%	20,461	471.%	91,213	149,129
6,790	6,790	100.%	6,592	103.%	Management Fee	33,949	33,950	100.%	32,960	103.%	81,480	80,093
6,790	6,790	100.%	6,592	103.%	Management Fees	33,949	33,950	100.%	32,960	103.%	81,480	80,093
23	23	100.%	23	100.%	Deprec - Mach & Equip	116	116	100.%	116	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	362	362	100.%	362	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	478	478	100.%	478	100.%	1,146	1,146
76,943	63,955	120.%	41,514	185.%	NET INCOME	61,851	31,888	194.%	(12,977)	(477.%)	8,587	67,890

The Golf Club at Cypress Head
Course Grounds
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
142,989	147,244	97.%	131,595	109.%	Green Fees	492,745	563,648	87.%	484,067	102.%	1,259,601	1,183,646
4,085	3,767	108.%	3,765	109.%	City Surcharge R & R	15,885	15,420	103.%	15,414	103.%	38,951	38,275
147,074	151,011	97.%	135,360	109.%	Total Revenues	508,630	579,068	88.%	499,480	102.%	1,298,552	1,221,921
147,074	151,011	97.%	135,360	109.%	GROSS MARGIN	508,630	579,068	88.%	499,480	102.%	1,298,552	1,221,921
					PAYROLL							
10,991	11,720	94.%	10,878	101.%	Gross Payroll - Salaried	58,765	58,599	100.%	57,270	103.%	140,637	140,111
27,825	25,988	107.%	19,749	141.%	Gross Payroll - Hourly	147,143	139,809	105.%	111,416	132.%	338,431	327,815
38,816	37,708	103.%	30,627	127.%	S/T Wages	205,909	198,407	104.%	168,686	122.%	479,068	467,926
2,885	2,885	100.%	2,261	128.%	Payroll Tax - FICA	15,288	15,178	101.%	12,488	122.%	36,649	34,669
193	251	77.%	194	99.%	Payroll Tax - UC	654	597	110.%	503	130.%	862	982
673	408	165.%	874	77.%	Payroll Tax - WC	3,461	2,149	161.%	3,255	106.%	5,340	7,976
2,852	3,283	87.%	5,815	49.%	Benefits	14,094	16,426	86.%	16,513	85.%	40,047	30,133
6,603	6,827	97.%	9,143	72.%	S/T Adders	33,497	34,350	98.%	32,760	102.%	82,898	73,759
45,420	44,535	102.%	39,770	114.%	TOTAL PAYROLL	239,405	232,757	103.%	201,446	119.%	561,966	541,685
					OPERATING EXPENSES							
1,258	800	157.%	650	194.%	Chemicals	4,838	4,000	121.%	3,632	133.%	9,600	8,704
716	600	119.%	204	350.%	Course Accessories	3,692	1,800	205.%	1,539	240.%	5,600	6,833
1,954	4,000	49.%	1,283	152.%	Fertilizer	25,023	22,100	113.%	18,978	132.%	60,100	50,243
0	0	0.%	0	0.%	Flowers/Decor	0	700	0.%	60	0.%	2,100	77
840	1,600	53.%	1,553	54.%	Fuel	7,171	7,700	93.%	7,300	98.%	21,100	18,574
342	0	0.%	1,259	27.%	Fungicides	4,684	4,600	102.%	4,485	104.%	6,600	6,766
9,477	7,000	135.%	6,801	139.%	Herbicides	9,273	14,400	64.%	12,833	72.%	35,900	32,061
0	0	0.%	1,062	0.%	Insecticides	(1,338)	0	0.%	4,517	(30.%)	12,800	2,780
0	1,000	0.%	403	0.%	Sand/Topdress	4,697	5,000	94.%	4,297	109.%	15,000	13,865
0	0	0.%	0	0.%	Seeds/Trees	2,995	5,000	60.%	3,520	85.%	7,900	4,895
158	0	0.%	0	0.%	Small Tools	506	600	84.%	0	0.%	1,800	872
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
175	540	32.%	175	100.%	Irrigation	4,383	2,700	162.%	700	626.%	6,480	9,961
0	0	0.%	0	0.%	Repair & Maint - Paths	838	2,000	42.%	2,901	29.%	4,000	1,677
2,447	2,300	106.%	1,065	230.%	Repair & Maint - Equipment	9,393	11,500	82.%	6,523	144.%	27,600	28,110
165	200	83.%	350	47.%	Repair & Maint - Building	1,894	1,000	189.%	1,180	160.%	2,400	2,093
185	9,945	2.%	9,945	2.%	Equipment Lease	925	49,725	2.%	49,725	2.%	119,340	73,046
248	300	83.%	241	103.%	Utilities - Electric	1,271	1,500	85.%	1,344	95.%	3,600	3,289
1,508	1,800	84.%	1,437	105.%	Utilities - Other	8,203	9,000	91.%	8,227	100.%	21,600	23,387
341	225	152.%	361	94.%	Utilities - Water	1,475	1,125	131.%	1,342	110.%	2,700	3,511
0	0	0.%	0	0.%	Education & Training	0	465	0.%	465	0.%	785	75
259	0	0.%	0	0.%	Employee Relations	835	550	152.%	536	156.%	850	1,050
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
0	0	0.%	0	0.%	Tax/Licenses/Fees	465	0	0.%	0	0.%	0	655
20,073	30,310	66.%	26,790	75.%	TOTAL OPERATING EXPENSES	91,308	145,565	63.%	134,193	68.%	374,055	299,060
81,582	76,166	107.%	68,800	119.%	EBITDA	177,917	200,746	89.%	163,842	109.%	362,531	381,176
81,582	76,166	107.%	68,800	119.%	NET INCOME	177,917	200,746	89.%	163,842	109.%	362,531	381,176

The Golf Club at Cypress Head
Carts
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
77,352	73,858	105.%	68,067	114.%	Cart Fee	300,628	296,094	102.%	278,756	108.%	703,621	702,969
77,352	73,858	105.%	68,067	114.%	Total Revenues	300,628	296,094	102.%	278,756	108.%	703,621	702,969
77,352	73,858	105.%	68,067	114.%	GROSS MARGIN	300,628	296,094	102.%	278,756	108.%	703,621	702,969
					PAYROLL							
14,851	15,392	96.%	14,123	105.%	Gross Payroll - Hourly	68,050	82,546	82.%	67,005	102.%	202,577	169,037
14,851	15,392	96.%	14,123	105.%	S/T Wages	68,050	82,546	82.%	67,005	102.%	202,577	169,037
1,143	1,177	97.%	1,080	106.%	Payroll Tax - FICA	5,292	6,315	84.%	5,246	101.%	15,497	13,258
115	135	85.%	122	94.%	Payroll Tax - UC	357	285	125.%	413	86.%	1,191	1,175
267	167	160.%	387	69.%	Payroll Tax - WC	1,131	894	127.%	1,272	89.%	2,259	3,044
22	25	91.%	454	5.%	Benefits	127	133	95.%	478	27.%	322	(103)
1,547	1,504	103.%	2,043	76.%	S/T Adders	6,907	7,627	91.%	7,409	93.%	19,269	17,374
16,398	16,896	97.%	16,166	101.%	TOTAL PAYROLL	74,957	90,174	83.%	74,414	101.%	221,847	186,411
					OPERATING EXPENSES							
0	0	0.%	6	0.%	Cart Supplies	210	300	70.%	285	74.%	450	413
102	0	0.%	0	0.%	Supplies	102	350	29.%	357	28.%	950	440
0	0	0.%	0	0.%	Cart Repairs	402	50	804.%	47	857.%	750	699
0	7,141	0.%	7,141	0.%	Cart Lease	0	35,705	0.%	35,705	0.%	85,692	49,987
724	650	111.%	712	102.%	Utilities - Electric	3,331	3,250	103.%	3,403	98.%	7,800	8,106
826	7,791	11.%	7,859	11.%	TOTAL OPERATING EXPENSES	4,044	39,655	10.%	39,797	10.%	95,642	59,646
60,128	49,170	122.%	44,041	137.%	EBITDA	221,627	166,265	133.%	164,546	135.%	386,132	456,912
60,128	49,170	122.%	44,041	137.%	NET INCOME	221,627	166,265	133.%	164,546	135.%	386,132	456,912

The Golf Club at Cypress Head
Range
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
8,834	6,643	133.%	6,543	135.%	Range	28,920	25,837	112.%	24,337	119.%	80,609	80,818
8,834	6,643	133.%	6,543	135.%	Total Revenues	28,920	25,837	112.%	24,337	119.%	80,609	80,818
8,834	6,643	133.%	6,543	135.%	GROSS MARGIN	28,920	25,837	112.%	24,337	119.%	80,609	80,818
					OPERATING EXPENSES							
0	0	0.%	0	0.%	Range Balls	3,625	0	0.%	0	0.%	6,500	10,500
0	0	0.%	0	0.%	Range Equipment	1,111	400	278.%	0	0.%	1,000	2,493
0	200	0.%	0	0.%	Range Expenses	98	1,200	8.%	1,182	8.%	2,175	734
0	50	0.%	0	0.%	Repair & Maint - Equipment	0	250	0.%	1,532	0.%	600	21
0	250	0.%	0	0.%	TOTAL OPERATING EXPENSES	4,834	1,850	261.%	2,714	178.%	10,275	13,748
8,834	6,393	138.%	6,543	135.%	EBITDA	24,086	23,987	100.%	21,623	111.%	70,334	67,070
8,834	6,393	138.%	6,543	135.%	NET INCOME	24,086	23,987	100.%	21,623	111.%	70,334	67,070

The Golf Club at Cypress Head
Golf Shop
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
31,045	32,000	97.%	25,565	121.%	Merchandise	120,013	122,000	98.%	120,532	100.%	312,000	339,827
3,085	2,710	114.%	2,710	114.%	Handicap Fee	3,625	3,780	96.%	3,755	97.%	7,700	6,715
1,345	2,000	67.%	1,970	68.%	Lessons	5,001	6,000	83.%	5,715	88.%	26,850	13,466
1,618	829	195.%	619	261.%	Rental Clubs	4,823	4,199	115.%	3,983	121.%	9,769	13,227
37,093	37,539	99.%	30,864	120.%	Total Revenues	133,462	135,979	98.%	133,984	100.%	356,319	373,235
					COST OF GOODS SOLD							
24,817	21,760	114.%	18,263	136.%	COGS - Merchandise	85,333	83,160	103.%	85,003	100.%	213,650	239,799
24,817	21,760	114.%	18,263	136.%	Total COGS	85,333	83,160	103.%	85,003	100.%	213,650	239,799
12,276	15,779	78.%	12,601	97.%	GROSS MARGIN	48,129	52,819	91.%	48,981	98.%	142,669	133,436
80.%	68.%	118.%	71.%	113.%	COGS - Merchandise %	71.%	68.%	104.%	71.%	100.%	68.%	832.%
					PAYROLL							
3,812	3,713	103.%	4,347	88.%	Gross Payroll - Salaried	21,345	18,566	115.%	20,660	103.%	44,558	51,483
6,608	7,908	84.%	7,265	91.%	Gross Payroll - Hourly	31,533	42,647	74.%	33,077	95.%	103,479	84,890
10,420	11,621	90.%	11,612	90.%	S/T Wages	52,878	61,212	86.%	53,737	98.%	148,036	136,374
763	889	86.%	848	90.%	Payroll Tax - FICA	3,877	4,683	83.%	3,908	99.%	11,325	10,248
60	99	61.%	95	63.%	Payroll Tax - UC	173	216	80.%	202	85.%	554	479
172	126	136.%	316	54.%	Payroll Tax - WC	888	663	134.%	1,034	86.%	1,650	2,967
1,361	1,302	105.%	1,798	76.%	Benefits	6,819	6,521	105.%	6,395	107.%	15,898	15,051
2,356	2,415	98.%	3,057	77.%	S/T Adders	11,756	12,083	97.%	11,539	102.%	29,427	28,745
12,776	14,036	91.%	14,668	87.%	TOTAL PAYROLL	64,634	73,295	88.%	65,276	99.%	177,463	165,118
					OPERATING EXPENSES							
0	0	0.%	0	0.%	Printing	1,300	1,900	68.%	1,598	81.%	3,100	2,210
343	100	343.%	0	0.%	Supplies	1,344	860	156.%	3,472	39.%	2,290	2,867
0	50	0.%	55	0.%	Tournament Expense	372	2,150	17.%	3,474	11.%	3,050	2,013
5,960	6,000	99.%	5,947	100.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
0	0	0.%	0	0.%	Lesson Expense	0	600	0.%	583	0.%	1,200	0
0	0	0.%	0	0.%	Education & Training	0	0	0.%	602	0.%	0	0
6,303	6,150	102.%	6,002	105.%	TOTAL OPERATING EXPENSES	9,138	11,910	77.%	16,141	57.%	16,490	13,914
(6,803)	(4,407)	154.%	(8,070)	84.%	EBITDA	(25,643)	(32,386)	79.%	(32,436)	79.%	(51,284)	(45,597)
(6,803)	(4,407)	154.%	(8,070)	84.%	NET INCOME	(25,643)	(32,386)	79.%	(32,436)	79.%	(51,284)	(45,597)

The Golf Club at Cypress Head
G A
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
13,472	14,273	94.%	13,456	100.%	Gross Payroll - Salaried	71,713	71,366	100.%	70,270	102.%	171,277	177,123
111	156	71.%	66	169.%	Gross Payroll - Hourly	617	841	73.%	788	78.%	2,034	1,312
13,583	14,429	94.%	13,522	100.%	S/T Wages	72,330	72,207	100.%	71,058	102.%	173,311	178,435
940	1,104	85.%	941	100.%	Payroll Tax - FICA	5,392	5,524	98.%	6,273	86.%	13,258	12,319
1	14	7.%	21	5.%	Payroll Tax - UC	113	131	86.%	127	89.%	141	0
235	156	151.%	371	63.%	Payroll Tax - WC	1,321	782	169.%	1,699	78.%	1,932	3,126
2,431	2,301	106.%	3,588	68.%	Benefits	12,313	11,507	107.%	13,732	90.%	28,042	27,533
3,608	3,575	101.%	4,920	73.%	S/T Adders	19,139	17,943	107.%	21,830	88.%	43,373	42,978
17,191	18,004	95.%	18,442	93.%	TOTAL PAYROLL	91,469	90,150	101.%	92,888	98.%	216,683	221,412
					OPERATING EXPENSES							
681	50	1362.%	0	0.%	Janitorial Supplies	2,492	1,300	192.%	1,280	195.%	3,600	6,015
0	0	0.%	0	0.%	Laundry/Uniforms	180	400	45.%	42	434.%	575	180
247	400	62.%	415	60.%	Office Supplies	2,785	2,300	121.%	2,313	120.%	4,450	6,537
0	0	0.%	0	0.%	Printing	48	0	0.%	0	0.%	0	48
257	150	171.%	142	181.%	Alarm System	1,122	750	150.%	710	158.%	1,900	2,580
3,592	1,150	312.%	4,156	86.%	Computer Service	11,847	5,750	206.%	8,838	134.%	13,800	25,295
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	5,000	5,500	91.%	5,075	99.%	13,200	12,000
2,630	500	526.%	3,381	78.%	Guest Relations	2,630	2,160	122.%	5,040	52.%	2,360	3,781
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
0	100	0.%	1,846	0.%	Repair & Maint - Equipment	1,540	200	770.%	1,851	83.%	1,700	6,364
800	200	400.%	124	645.%	Repair & Maint - Building	4,987	1,000	499.%	6,030	83.%	2,400	8,160
206	206	100.%	206	100.%	Off-Site Storage	824	1,030	80.%	1,030	80.%	2,472	2,266
2,732	2,000	137.%	2,295	119.%	Utilities - Other	12,406	10,000	124.%	10,909	114.%	24,000	29,816
184	200	92.%	199	92.%	Utilities - Telephone/Fax	671	1,000	67.%	995	67.%	2,400	2,055
505	500	101.%	457	111.%	Bank Charges	2,088	1,700	123.%	1,630	128.%	4,200	4,399
64	0	0.%	(48)	(132.%)	Cash Short/(Over)	53	0	0.%	(689)	(8.%)	0	(357)
240	330	73.%	240	100.%	Cell Phone	1,200	1,650	73.%	1,200	100.%	3,960	2,880
4,085	3,767	108.%	3,765	109.%	City Surcharge R & R	15,885	15,420	103.%	15,414	103.%	38,951	38,275
5,166	5,000	103.%	5,049	102.%	Credit Card Discounts	24,732	25,000	99.%	23,963	103.%	60,000	61,073
0	0	0.%	0	0.%	Donations	92	0	0.%	0	0.%	0	92
0	0	0.%	0	0.%	Dues & Subscriptions	285	540	53.%	540	53.%	1,140	2,281
0	0	0.%	0	0.%	Education & Training	0	0	0.%	0	0.%	0	220
340	50	681.%	(324)	(105.%)	Employee Relations	5,072	5,350	95.%	6,900	73.%	5,700	7,226
9,985	10,200	98.%	9,213	108.%	Insurance Expense	49,924	51,000	98.%	46,067	108.%	122,400	116,635
260	0	0.%	0	0.%	Member Relations	347	100	347.%	321	108.%	900	1,202
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
394	500	79.%	500	79.%	Payroll Processing Fee	2,435	2,450	99.%	2,494	98.%	5,650	6,091
322	100	322.%	113	283.%	Postage/Shipping	1,074	400	268.%	739	145.%	1,100	2,063
(30)	(30)	100.%	(30)	100.%	Tax/Licenses/Fees	85	(150)	(57.%)	(150)	(57.%)	(285)	(125)
925	1,500	62.%	1,308	71.%	Travel - Other	3,236	1,650	196.%	1,712	189.%	2,000	6,001
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
34,586	27,973	124.%	34,007	102.%	TOTAL OPERATING EXPENSES	164,915	149,000	111.%	156,770	105.%	336,073	371,466
(51,777)	(45,977)	113.%	(52,449)	99.%	EBITDA	(256,383)	(239,150)	107.%	(249,659)	103.%	(552,756)	(592,878)
6,790	6,790	100.%	6,592	103.%	Management Fee	33,949	33,950	100.%	32,960	103.%	81,480	80,093
6,790	6,790	100.%	6,592	103.%	Management Fees	33,949	33,950	100.%	32,960	103.%	81,480	80,093
23	23	100.%	23	100.%	Deprec - Mach & Equip	116	116	100.%	116	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	362	362	100.%	362	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	478	478	100.%	478	100.%	1,146	1,146
(58,662)	(52,863)	111.%	(59,136)	99.%	NET INCOME	(290,810)	(273,578)	106.%	(283,096)	103.%	(635,383)	(674,117)

The Golf Club at Cypress Head
Marketing
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
6,474	6,908	94.%	8,665	75.%	Gross Payroll - Salaried	34,384	34,542	100.%	34,311	100.%	82,900	84,798
6,474	6,908	94.%	8,665	75.%	S/T Wages	34,384	34,542	100.%	34,311	100.%	82,900	84,798
477	528	90.%	644	74.%	Payroll Tax - FICA	2,527	2,642	96.%	2,542	99.%	6,342	6,094
0	17	0.%	7	0.%	Payroll Tax - UC	54	77	69.%	102	53.%	123	54
112	75	150.%	183	61.%	Payroll Tax - WC	592	374	158.%	628	94.%	924	1,491
642	611	105.%	719	89.%	Benefits	3,193	3,055	105.%	2,564	125.%	7,454	7,414
1,230	1,231	100.%	1,553	79.%	S/T Adders	6,366	6,149	104.%	5,835	109.%	14,843	15,053
7,704	8,139	95.%	10,219	75.%	TOTAL PAYROLL	40,749	40,691	100.%	40,146	102.%	97,743	99,851
					OPERATING EXPENSES							
0	0	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,000	121.%	0	0.%	2,000	2,345
0	65	0.%	0	0.%	Adv/Promo - Promotional	342	405	84.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
0	1,000	0.%	0	0.%	Adv/Promo - Direct Mail	0	2,000	0.%	0	0.%	3,000	0
0	0	0.%	0	0.%	Adv/Promo - Special Events	0	250	0.%	0	0.%	500	0
433	500	87.%	445	97.%	Adv/Promo - Mktg/Bus Dev	1,529	2,500	61.%	7,309	21.%	6,000	8,685
0	0	0.%	0	0.%	Adv/Promo - Radio/TV	0	2,400	0.%	0	0.%	5,000	1,158
0	800	0.%	0	0.%	Adv/Promo - Website	1,500	3,400	44.%	0	0.%	8,000	4,250
433	2,365	18.%	445	97.%	TOTAL OPERATING EXPENSES	4,576	12,455	37.%	7,309	63.%	26,000	17,703
(8,137)	(10,504)	77.%	(10,663)	76.%	EBITDA	(45,326)	(53,146)	85.%	(47,455)	96.%	(123,743)	(117,554)
(8,137)	(10,504)	77.%	(10,663)	76.%	NET INCOME	(45,326)	(53,146)	85.%	(47,455)	96.%	(123,743)	(117,554)

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
220,341	221,102	100.%	199,662	110.%	Green Fees & Cart Fees	793,374	859,741	92.%	762,823	104.%	1,963,221	1,886,615
31,045	32,000	97.%	25,565	121.%	Merchandise	120,013	122,000	98.%	120,532	100.%	312,000	339,827
6,048	5,539	109.%	5,299	114.%	Other Pro Shop	13,449	13,979	96.%	13,452	100.%	44,319	33,409
8,834	6,643	133.%	6,543	135.%	Range	28,920	25,837	112.%	24,337	119.%	80,609	80,818
4,085	3,767	108.%	3,765	109.%	Other Operating Revenues	15,885	15,420	103.%	15,414	103.%	38,951	38,275
270,353	269,051	100.%	240,834	112.%	TOTAL REVENUE	971,641	1,036,977	94.%	936,558	104.%	2,439,100	2,378,943
					COST OF SALES							
24,817	21,760	114.%	18,263	136.%	Merchandise	85,333	83,160	103.%	85,003	100.%	213,650	239,799
24,817	21,760	114.%	18,263	136.%	TOTAL COGS	85,333	83,160	103.%	85,003	100.%	213,650	239,799
					PAYROLL							
45,420	44,535	102.%	39,770	114.%	Course and Grounds	239,405	232,757	103.%	201,446	119.%	561,966	541,685
16,398	16,896	97.%	16,166	101.%	Carts, Range, Starters, Etc.	74,957	90,174	83.%	74,414	101.%	221,847	186,411
12,776	14,036	91.%	14,668	87.%	Pro Shop	64,634	73,295	88.%	65,276	99.%	177,463	165,118
17,191	18,004	95.%	18,442	93.%	General and Administrative	91,469	90,150	101.%	92,888	98.%	216,683	221,412
7,704	8,139	95.%	10,219	75.%	Marketing	40,749	40,691	100.%	40,146	102.%	97,743	99,851
99,488	101,611	98.%	99,266	100.%	TOTAL PAYROLL	511,215	527,067	97.%	474,169	108.%	1,275,702	1,214,478
					OPERATING EXPENSES							
20,073	30,310	66.%	26,790	75.%	Course and Grounds	91,308	145,565	63.%	134,193	68.%	374,055	299,060
826	8,041	10.%	7,859	11.%	Carts, Range, Starters, Etc.	8,878	41,505	21.%	42,511	21.%	105,917	73,394
6,303	6,150	102.%	6,002	105.%	Pro Shop	9,138	11,910	77.%	16,141	57.%	16,490	13,914
34,586	27,973	124.%	34,007	102.%	General and Administrative	164,915	149,000	111.%	156,770	105.%	336,073	371,466
433	2,365	18.%	445	97.%	Marketing	4,576	12,455	37.%	7,309	63.%	26,000	17,703
62,220	74,839	83.%	75,103	83.%	TOTAL OPERATING EXPENSES	278,815	360,435	77.%	356,925	78.%	858,535	775,538
186,525	198,210	94.%	192,632	97.%	TOTAL EXPENSES	875,363	970,662	90.%	916,097	96.%	2,347,887	2,229,814
83,828	70,841	118.%	48,202	174.%	EBITDA	96,277	66,315	145.%	20,461	471.%	91,213	149,129

The Golf Club at Cypress Head
For the Five Months Ending Friday, February 28, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
83,828	70,841	118.%	48,202	174.%	EBITDA	96,277	66,315	145.%	20,461	471.%	91,213	149,129
(6,790)	(6,790)	100.%	(6,592)	103.%	MANAGEMENT FEES	(33,949)	(33,950)	100.%	(32,960)	103.%	(81,480)	(80,093)
					OTHER INCOME (EXPENSE)							
(96)	(96)	100.%	(96)	100.%	Depreciation & Amortization	(478)	(478)	100.%	(478)	100.%	(1,146)	(1,146)
(96)	(96)	100.%	(96)	100.%	TOTAL OTHER INCOME (EXPENSE)	(478)	(478)	100.%	(478)	100.%	(1,146)	(1,146)
76,943	63,955	120.%	41,514	185.%	NET INCOME	61,851	31,888	194.%	(12,977)	(477.%)	8,587	67,890
4,177	4,537	92.%	4,156	101.%	Paid Rounds	15,950	17,443	91.%	16,624	96.%	41,615	40,870
535	436	123.%	416	129.%	Annual Pass Rounds	2,058	1,805	114.%	1,794	115.%	4,907	4,550
316	243	130.%	243	130.%	Other Rounds	1,232	1,235	100.%	1,235	100.%	2,739	3,098
5,028	5,216	96.%	4,815	104.%	Total Rounds	19,240	20,483	94.%	19,653	98.%	49,261	48,518
65	59	109.%	58	112.%	Revenue/Paid Rounds	61	59	102.%	56	108.%	59	695
54	52	104.%	50	108.%	Revenue/Total Rounds	51	51	100.%	48	106.%	50	583

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

General Ledger

Ranges: **From:** **To:**
Date: 2/1/2025 2/28/2025
Account: First Last

Sorted By: Account
Include: Posting, Unit
Print Currency In: Functional (Z-US$)

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	10020-5950-900	Cash - Course Depository NEW	$284,754.20	$271,127.03	$216,199.62	$54,927.41	$339,681.61
	10050-5950-900	Cash - Course Payroll BMO	$37,477.45	$82,000.00	$80,893.49	$1,106.51	$38,583.96
	10100-5950-900	Cash - Course Other	$850.00	$0.00	$0.00	$0.00	$850.00
	10180-5950-900	Cash - Pro Shop Bank	$500.00	$0.00	$0.00	$0.00	$500.00
	11160-5950-900	A/R Member	$271.58	$9,302.79	$7,754.46	$1,548.33	$1,819.91
	12000-5950-900	Inventory - Merchandise	$116,541.11	$36,572.60	$25,795.01	$10,777.59	$127,318.70
	13020-5950-900	Prepaid Insurance	$28,798.12	$20,451.00	$9,984.79	$10,466.21	$39,264.33
	13040-5950-900	Prepaid Exp - Other	$40,007.59	$0.00	$9,049.65	($9,049.65)	$30,957.94
	20100-5950-900	Machinery & Equipment	$5,550.40	$0.00	$0.00	$0.00	$5,550.40
	20160-5950-900	Buildings and Improvements	$30,597.54	$0.00	$0.00	$0.00	$30,597.54
	22040-5950-900	Accum. Deprec - Mach & Equip	($5,364.30)	$0.00	$23.12	($23.12)	($5,387.42)
	22080-5950-900	Accum. Deprec - Buildings	($28,425.19)	$0.00	$72.41	($72.41)	($28,497.60)
	30000-5950-900	Accts Pay - Trade	($90,689.09)	$117,596.71	$121,633.71	($4,037.00)	($94,726.09)
	30040-5950-900	Accts Pay - Other	($185,858.22)	$497.78	$0.00	$497.78	($185,360.44)
	31000-5950-900	Accrued Expenses	$0.00	$0.00	$497.78	($497.78)	($497.78)
	31020-5950-900	Accrued Payroll	($39,155.74)	$22,007.70	$21,483.50	$524.20	($38,631.54)
	31080-5950-900	Accrued Tips Payable	$0.00	$136.00	$136.00	$0.00	$0.00
	31220-5950-900	Accrued Sales Tax	($12,856.23)	$12,856.23	$16,224.39	($3,368.16)	($16,224.39)
	31400-5950-900	Accrued City Surcharge	$0.00	$4,085.24	$4,085.24	$0.00	$0.00
	32000-5950-900	Deferred Rev - Rainchecks	($10,804.11)	$1,162.92	$1,442.46	($279.54)	($11,083.65)
	32020-5950-900	Deferred Rev - Outing Deposits	($12,967.09)	$0.00	$1,641.46	($1,641.46)	($14,608.55)
	32040-5950-900	Deferred Rev - Legacy GF Passes	($23,143.54)	$2,893.03	$0.00	$2,893.03	($20,250.51)
	32050-5950-900	Deferred Revenue - Cypress GF Passes	($50,508.63)	$6,872.67	$1,629.60	$5,243.07	($45,265.56)
	32070-5950-900	Deferred Rev - Gift Cards	($35,985.48)	$1,825.13	$902.16	$922.97	($35,062.51)
	32100-5950-900	Deferred Rev - Credit Books	($11,041.16)	$621.21	$1,459.90	($838.69)	($11,879.85)
	32120-5950-900	Deferred Rev - Trail Fee Pass	($53,638.37)	$9,059.03	$1,215.50	$7,843.53	($45,794.84)
	49020-5950-900	Retained Earnings - Current	($2.72)	$0.00	$0.00	$0.00	($2.72)
	50000-5950-100	Green Fees - Annual Pass	($32,965.12)	$0.00	$9,765.70	($9,765.70)	($42,730.82)
	5003A-5950-100	Green Fee - Group	($37,910.98)	$0.00	$15,590.24	($15,590.24)	($53,501.22)
	50040-5950-100	Green Fees - Member	($350.21)	$122.85	$0.00	$122.85	($227.36)
	5006A-5950-100	Green Fee - Junior	($4,531.47)	$0.00	$456.24	($456.24)	($4,987.71)
	50070-5950-100	Green Fees - (surcharge)	($11,801.87)	$4,085.24	$8,170.48	($4,085.24)	($15,887.11)
	5007A-5950-100	Green Fee - League	($24,906.52)	$0.00	$10,877.73	($10,877.73)	($35,784.25)
	5010A-5950-100	Green Fee - Non-Resident (Standard)	($56,885.73)	$0.00	$45,554.50	($45,554.50)	($102,440.23)
	5012A-5950-100	Green Fee - Outing	($26,101.94)	$0.00	$2,944.00	($2,944.00)	($29,045.94)
	5014A-5950-100	Green Fee - Resident	($79,273.76)	$10,797.27	$37,489.26	($26,691.99)	($105,965.75)
	5015A-5950-100	Green Fee - Senior	($73,842.03)	$0.00	$25,997.50	($25,997.50)	($99,839.53)
	5019A-5950-100	Green Fee - Wholesale	($1,186.59)	$0.00	$1,148.84	($1,148.84)	($2,335.43)
	50500-5950-200	Cart Fee 18	($189,165.26)	$0.00	$68,292.90	($68,292.90)	($257,458.16)
	50520-5950-200	Cart Fee - Annual Trail	($34,110.99)	$0.00	$9,059.03	($9,059.03)	($43,170.02)
	52090-5950-600	Handicap Fee	($540.00)	$0.00	$3,085.00	($3,085.00)	($3,625.00)
	52150-5950-600	Lessons	($3,656.45)	$0.00	$1,345.00	($1,345.00)	($5,001.45)
	52280-5950-600	Rental Clubs	($3,205.00)	$0.00	$1,617.56	($1,617.56)	($4,822.56)
	52310-5950-600	Retail	($88,968.39)	$0.00	$31,045.07	($31,045.07)	($120,013.46)
	53050-5950-220	Range Pass Revenue	($20,085.47)	$40.00	$8,874.17	($8,834.17)	($28,919.64)
	56120-5950-100	City Surcharge R & R	($11,799.88)	$0.00	$4,085.24	($4,085.24)	($15,885.12)
	60000-5950-600	COGS - Merchandise - Accessories	$60,516.61	$24,816.76	$0.00	$24,816.76	$85,333.37
	70000-5950-100	Gross Payroll - Salaried	$47,774.61	$13,738.55	$2,747.71	$10,990.84	$58,765.45
	70000-5950-600	Gross Payroll - Salaried	$17,533.82	$4,668.40	$856.88	$3,811.52	$21,345.34
	70000-5950-900	Gross Payroll - Salaried	$58,240.76	$16,765.67	$3,293.34	$13,472.33	$71,713.09
	70000-5950-950	Gross Payroll - Salaried	$27,910.02	$7,860.41	$1,386.54	$6,473.87	$34,383.89
	70010-5950-100	Gross Payroll - Hourly	$119,317.82	$34,434.65	$6,609.19	$27,825.46	$147,143.28
	70010-5950-200	Gross Payroll - Hourly	$53,199.27	$19,059.08	$4,208.11	$14,850.97	$68,050.24

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	70010-5950-600	Gross Payroll - Hourly	$24,924.36	$7,912.34	$1,303.87	$6,608.47	$31,532.83
	70010-5950-900	Gross Payroll - Hourly	$506.29	$149.07	$38.13	$110.94	$617.23
	71000-5950-100	Payroll Tax - FICA	$12,402.77	$3,601.30	$715.81	$2,885.49	$15,288.26
	71000-5950-200	Payroll Tax - FICA	$4,149.19	$1,464.57	$321.92	$1,142.65	$5,291.84
	71000-5950-600	Payroll Tax - FICA	$3,114.58	$927.99	$165.29	$762.70	$3,877.28
	71000-5950-900	Payroll Tax - FICA	$4,451.91	$1,195.33	$254.86	$940.47	$5,392.38
	71000-5950-950	Payroll Tax - FICA	$2,050.80	$582.59	$106.05	$476.54	$2,527.34
	71010-5950-100	Payroll Tax - UC	$461.05	$192.69	$0.00	$192.69	$653.74
	71010-5950-200	Payroll Tax - UC	$241.76	$114.84	$0.00	$114.84	$356.60
	71010-5950-600	Payroll Tax - UC	$112.84	$59.69	$0.00	$59.69	$172.53
	71010-5950-900	Payroll Tax - UC	$111.57	$0.99	$0.00	$0.99	$112.56
	71010-5950-950	Payroll Tax - UC	$53.66	$0.00	$0.00	$0.00	$53.66
	71020-5950-100	Payroll Tax - WC	$2,787.70	$672.87	$0.00	$672.87	$3,460.57
	71020-5950-200	Payroll Tax - WC	$864.39	$266.89	$0.00	$266.89	$1,131.28
	71020-5950-600	Payroll Tax - WC	$716.00	$171.73	$0.00	$171.73	$887.73
	71020-5950-900	Payroll Tax - WC	$1,085.21	$235.37	$0.00	$235.37	$1,320.58
	71020-5950-950	Payroll Tax - WC	$479.81	$112.00	$0.00	$112.00	$591.81
	71030-5950-100	Benefits	$11,241.72	$9,062.85	$6,210.53	$2,852.32	$14,094.04
	71030-5950-200	Benefits	$104.67	$1,167.02	$1,144.64	$22.38	$127.05
	71030-5950-600	Benefits	$5,457.13	$2,443.33	$1,081.92	$1,361.41	$6,818.54
	71030-5950-900	Benefits	$9,881.75	$5,211.00	$2,779.71	$2,431.29	$12,313.04
	71030-5950-950	Benefits	$2,551.20	$886.36	$244.84	$641.52	$3,192.72
	80110-5950-200	Cart Supplies	$209.63	$0.00	$0.00	$0.00	$209.63
	80120-5950-100	Chemicals	$3,579.34	$1,258.28	$0.00	$1,258.28	$4,837.62
	80170-5950-100	Course Accessories	$2,975.38	$716.42	$0.00	$716.42	$3,691.80
	80230-5950-100	Fertilizer	$23,069.19	$1,953.82	$0.00	$1,953.82	$25,023.01
	80270-5950-100	Fuel	$6,330.55	$840.36	$0.00	$840.36	$7,170.91
	80280-5950-100	Fungicides	$4,342.12	$341.62	$0.00	$341.62	$4,683.74
	80320-5950-100	Herbicides	($204.50)	$9,477.16	$0.00	$9,477.16	$9,272.66
	80370-5950-100	Insecticides	($1,337.77)	$0.00	$0.00	$0.00	($1,337.77)
	80380-5950-900	Janitorial Supplies	$1,811.54	$680.84	$0.00	$680.84	$2,492.38
	80420-5950-900	Laundry/Uniforms	$180.30	$0.00	$0.00	$0.00	$180.30
	80520-5950-900	Office Supplies	$2,538.08	$247.05	$0.00	$247.05	$2,785.13
	80590-5950-600	Printing	$1,300.00	$0.00	$0.00	$0.00	$1,300.00
	80590-5950-900	Printing	$48.44	$0.00	$0.00	$0.00	$48.44
	80610-5950-220	Range Balls	$3,625.00	$0.00	$0.00	$0.00	$3,625.00
	80620-5950-220	Range Equipment	$1,110.73	$0.00	$0.00	$0.00	$1,110.73
	80630-5950-220	Range Expenses	$98.19	$0.00	$0.00	$0.00	$98.19
	80690-5950-100	Sand/Topdress	$4,697.26	$0.00	$0.00	$0.00	$4,697.26
	80710-5950-100	Seeds/Trees	$2,994.60	$0.00	$0.00	$0.00	$2,994.60
	80730-5950-100	Small Tools	$347.88	$157.88	$0.00	$157.88	$505.76
	80780-5950-200	Supplies	$0.00	$101.50	$0.00	$101.50	$101.50
	80780-5950-600	Supplies	$1,001.14	$343.34	$0.00	$343.34	$1,344.48
	80810-5950-600	Tournament Expense	$371.78	$0.00	$0.00	$0.00	$371.78
	81010-5950-900	Alarm System	$865.00	$257.00	$0.00	$257.00	$1,122.00
	81090-5950-200	Cart Repairs	$401.90	$0.00	$0.00	$0.00	$401.90
	81130-5950-900	Computer Service	$8,254.88	$3,591.63	$0.00	$3,591.63	$11,846.51
	81140-5950-900	Contract Cleaning	$4,000.00	$1,000.00	$0.00	$1,000.00	$5,000.00
	81200-5950-900	Guest Relations	$0.00	$2,630.00	$0.00	$2,630.00	$2,630.00
	81220-5950-600	Handicap Expense	$161.50	$5,960.00	$0.00	$5,960.00	$6,121.50
	81250-5950-100	Irrigation	$4,208.34	$175.00	$0.00	$175.00	$4,383.34
	81340-5950-100	Repair & Maint - Paths	$838.40	$0.00	$0.00	$0.00	$838.40
	81350-5950-100	Repair & Maint - Equipment	$6,946.41	$2,446.75	$0.00	$2,446.75	$9,393.16
	81350-5950-900	Repair & Maint - Equipment	$1,539.50	$0.00	$0.00	$0.00	$1,539.50
	81360-5950-100	Repair & Maint - Building	$1,728.70	$286.00	$121.00	$165.00	$1,893.70
	81360-5950-900	Repair & Maint - Building	$4,186.96	$799.74	$0.00	$799.74	$4,986.70
	82020-5950-100	Equipment Lease	$740.00	$185.00	$0.00	$185.00	$925.00
	82060-5950-900	Off-Site Storage	$618.00	$206.00	$0.00	$206.00	$824.00
	83000-5950-100	Utlities - Electric	$1,023.43	$247.70	$0.00	$247.70	$1,271.13
	83000-5950-200	Utilities - Electric	$2,607.01	$724.33	$0.00	$724.33	$3,331.34

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	83020-5950-100	Utlities - Other	$6,694.61	$1,507.94	$0.00	$1,507.94	$8,202.55
	83020-5950-900	Utilities - Other	$9,673.93	$2,732.39	$0.00	$2,732.39	$12,406.32
	83030-5950-900	Utilities - Telephone/Fax	$487.24	$183.83	$0.00	$183.83	$671.07
	83050-5950-100	Utlities - Water	$1,134.31	$340.97	$0.00	$340.97	$1,475.28
	84040-5950-950	Adv/Promo - Mktg/Bus Dev	$1,096.59	$624.88	$192.22	$432.66	$1,529.25
	84070-5950-950	Adv/Promo - Organizations	$1,205.00	$0.00	$0.00	$0.00	$1,205.00
	84080-5950-950	Adv/Promo - Promotional	$342.20	$0.00	$0.00	$0.00	$342.20
	84110-5950-950	Adv/Promo - Website	$1,500.00	$0.00	$0.00	$0.00	$1,500.00
	85020-5950-900	Bank Charges	$1,583.12	$505.36	$0.00	$505.36	$2,088.48
	85050-5950-900	Cash Short/(Over)	($10.82)	$299.01	$235.08	$63.93	$53.11
	85060-5950-900	Cell Phone	$960.00	$240.00	$0.00	$240.00	$1,200.00
	85070-5950-900	City Surcharge R & R	$11,799.88	$4,085.24	$0.00	$4,085.24	$15,885.12
	85120-5950-900	Credit Card Discounts	$19,565.32	$5,166.24	$0.00	$5,166.24	$24,731.56
	85140-5950-900	Donations	$91.97	$0.00	$0.00	$0.00	$91.97
	85150-5950-900	Dues & Subscriptions	$285.00	$0.00	$0.00	$0.00	$285.00
	85190-5950-100	Employee Relations	$576.53	$258.72	$0.00	$258.72	$835.25
	85190-5950-900	Employee Relations	$4,731.27	$340.28	$0.00	$340.28	$5,071.55
	85200-5950-100	Employee Testing	$85.66	$0.00	$0.00	$0.00	$85.66
	85280-5950-900	Insurance Expense	$39,939.16	$9,984.79	$0.00	$9,984.79	$49,923.95
	85320-5950-900	Member Relations	$86.15	$260.40	$0.00	$260.40	$346.55
	85390-5950-900	O/S - Accounting	$11,875.00	$0.00	$0.00	$0.00	$11,875.00
	85480-5950-900	Payroll Processing Fee	$2,040.95	$394.21	$0.00	$394.21	$2,435.16
	85490-5950-900	Postage/Shipping	$752.16	$322.69	$1.00	$321.69	$1,073.85
	85610-5950-100	Tax/Licenses/Fees	$465.00	$0.00	$0.00	$0.00	$465.00
	85610-5950-900	Tax/Licenses/Fees	$115.00	$0.00	$30.00	($30.00)	$85.00
	85720-5950-900	Travel - Other	$2,310.97	$924.92	$0.00	$924.92	$3,235.89
	90000-5950-900	Management Fee	$27,159.04	$6,789.76	$0.00	$6,789.76	$33,948.80
	98020-5950-900	Deprec - Mach & Equip	$92.48	$23.12	$0.00	$23.12	$115.60
	98040-5950-900	Deprec - Buildings	$289.64	$72.41	$0.00	$72.41	$362.05
	R002A-5950-100	Rounds - Annual	18,396.00	535.00	0.00	535.00	18,931.00
	R003A-5950-100	Rounds - Group	21,794.00	460.00	0.00	460.00	22,254.00
	R005A-5950-100	Rounds - Green Fee - Hotel	44.00	0.00	0.00	0.00	44.00
	R006A-5950-100	Rounds - Green Fee - Junior	3,094.00	83.00	0.00	83.00	3,177.00
	R007A-5950-100	Rounds - Green Fee - League	18,092.00	421.00	0.00	421.00	18,513.00
	R010A-5950-100	Rounds - Green Fee - Non-Resident (Standard)	15,524.00	991.00	0.00	991.00	16,515.00
	R011A-5950-100	Rounds - Green Fee - Non-Revenue	1,069.00	9.00	0.00	9.00	1,078.00
	R012A-5950-100	Rounds - Green Fee - Outing	12,476.00	80.00	0.00	80.00	12,556.00
	R014A-5950-100	Rounds - Resident	77,100.00	1,441.00	0.00	1,441.00	78,541.00
	R015A-5950-100	Rounds - Green Fee - Senior	32,505.00	673.00	0.00	673.00	33,178.00
	R016A-5950-100	Rounds - Green Fee - Staff	7,486.00	233.00	0.00	233.00	7,719.00
	R017A-5950-100	Rounds - Green Fee - Trade	4,265.00	74.00	0.00	74.00	4,339.00
	R018A-5950-100	Rounds - Green Fee - Twilight	31.00	0.00	0.00	0.00	31.00
	R019A-5950-100	Rounds - Green Fee - Wholesale	692.00	28.00	0.00	28.00	720.00
	RCMWD-5950-100	Rounds - Complimentary - Weekday	15,846.00	0.00	0.00	0.00	15,846.00
	REMWD-5950-100	Rounds - Employee - Weekday	21,589.00	0.00	0.00	0.00	21,589.00
	RMBWD-5950-100	Rounds - Member - Weekday	80,170.00	0.00	0.00	0.00	80,170.00
	RPKWD-5950-100	Rounds - Peak - Weekday	450,023.00	0.00	0.00	0.00	450,023.00
	RPKWE-5950-100	Rounds - Peak - Weekend	5,071.00	0.00	0.00	0.00	5,071.00

	Accounts	Beginning Balance	Debit	Credit	Net Change	Ending Balance
Grand Totals:	**161**	**$0.00**	**$841,571.35**	**$841,571.35**	**$0.00**	**$0.00**

The Golf Club at Cypress Head
Course Cash Flow Report
For the Year Ended Friday, February 28, 2025

	Oct Actual	Nov Actual	Dec Actual	Jan Actual	Feb Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
EBITDA	(48,231)	16,897	7,782	36,002	83,828							
Management Fee Expense	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)							
Depreciation & Amortization	(96)	(96)	(96)	(96)	(96)							
Net Income	(55,116)	10,012	896	29,116	76,943	0	0	0	0	0	0	0
Working Capital Changes												
Inventory	(9,783)	7,245	4,673	(13,630)	(10,778)							
Receivables	(17,039)	18,162	(5,457)	5,605	(1,548)							
Prepaid Expenses	(16,920)	(18,423)	12,607	13,614	(1,417)							
Payables	18,515	8,449	4,713	14,760	4,037							
Due to from the City	(17,593)	0	498	0	(498)							
Accrued Expenses	7,532	17,766	(5,549)	(27,083)	3,342							
Deferred Revenues	36,316	(21,096)	(5,163)	(11,332)	(14,143)							
Depreciation & Amortization	96	96	96	96	96							
Operating Cash Flow	(53,994)	22,208	7,313	11,145	56,034	0	0	0	0	0	0	0
Investing Activities												
Financing Activites												
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	0	0	0	0	0	0	0
Beginning Cash	336,909	282,915	305,124	312,436	323,582							
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	0	0	0	0	0	0	0
Ending Cash	282,915	305,124	312,436	323,582	379,616	0	0	0	0	0	0	0

The Golf Club at Cypress Head
Comparative Income Statement
For the Six Months Ending Monday, March 31, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
REVENUES								
Green Fees & Cart Fees	236,966	999,788	1,856,064	54.%	256,511	1,049,884	1,963,221	53.%
Merchandise	30,767	151,299	340,345	44.%	32,278	152,292	312,000	49.%
Other Pro Shop	6,024	19,477	33,412	58.%	6,690	20,139	44,319	45.%
Range	7,861	32,198	76,236	42.%	10,474	39,394	80,609	49.%
Other Operating Revenues	4,509	19,922	37,803	53.%	4,760	20,645	38,951	53.%
TOTAL REVENUE	286,127	1,222,685	2,343,861	52.%	310,712	1,282,353	2,439,100	53.%
COST OF SALES								
Merchandise	18,708	103,711	239,469	43.%	22,582	107,915	213,650	51.%
TOTAL COGS	18,708	103,711	239,469	43.%	22,582	107,915	213,650	51.%
COGS - Merchandise %	61.%	69.%	70.%	99.%	70.%	71.%	68.%	104.%
PAYROLL								
Course and Grounds	38,908	240,354	503,726	48.%	46,470	285,876	561,966	51.%
Carts, Range, Starters, Etc.	18,497	92,911	185,868	50.%	20,100	95,057	221,847	43.%
Pro Shop	15,760	81,036	165,760	49.%	14,931	79,565	177,463	45.%
General and Administrative	16,612	109,500	222,831	49.%	18,915	110,384	216,683	51.%
Marketing	7,212	47,357	99,247	48.%	8,712	49,462	97,743	51.%
TOTAL PAYROLL	96,989	571,158	1,177,432	49.%	109,129	620,344	1,275,702	49.%
OPERATING EXPENSES								
Course and Grounds	31,434	165,626	341,945	48.%	23,700	115,008	374,055	31.%
Carts, Range, Starters, Etc.	11,361	53,872	107,026	50.%	1,288	10,166	105,917	10.%
Pro Shop	2,228	18,369	20,918	88.%	458	9,596	16,490	58.%
General and Administrative	29,025	185,795	363,322	51.%	37,014	201,929	336,073	60.%
Marketing	1,492	8,802	20,436	43.%	4,789	9,365	26,000	36.%
TOTAL OPERATING EXPENSES	75,540	432,464	853,647	51.%	67,248	346,064	858,535	40.%
TOTAL EXPENSES	191,236	1,107,333	2,270,548	49.%	198,959	1,074,323	2,347,887	46.%

The Golf Club at Cypress Head
Comparative Income Statement
For the Six Months Ending Monday, March 31, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
OTHER INCOME (EXPENSE)								
MANAGEMENT FEES	(6,592)	(39,552)	(79,104)	50.%	(6,790)	(40,739)	(81,480)	50.%
Depreciation & Amortization	(96)	(573)	(1,146)	50.%	(96)	(573)	(1,146)	50.%
TOTAL OTHER INCOME (EXPENSE)	(6,688)	(40,125)	(80,250)	50.%	(6,885)	(41,312)	(82,626)	50.%
NET INCOME	88,203	75,226	(6,938)	(1084.%)	104,868	166,719	8,587	1942.%
Paid Rounds	5,059	21,683			4,978	20,928	41,475	50.%
Annual Pass Rounds	425	2,219			577	2,635	4,907	54.%
Other Rounds	318	1,553			294	1,526	2,739	56.%
Total Rounds	5,802	25,455			5,849	25,089	49,121	51.%
Revenue/Paid Rounds	57	56			62	61	59	104.%
Revenue/Total Rounds	49	48			53	51	50	103.%

The Golf Club at Cypress Head
Course Cash Flow Report
Monday, March 31, 2025

	March	YTD
EBITDA	**$111,752.94**	**$208,030.33**
Management Fee Expense	**(6,789.76)**	**(40,738.56)**
Depreciation & Amortization	**(95.53)**	**(573.18)**
Net Income	**104,867.65**	**166,718.59**
Working Capital Changes		
Inventory	**(1,448.99)**	**(23,722.19)**
Receivables	**(657.68)**	**(935.04)**
Payables	**9,791.12**	**60,264.30**
Due to from the City	**544.11**	**(17,049.35)**
Prepaids	**10,463.50**	**(75.74)**
Accrued Liabilities	**10,032.35**	**6,039.00**
Other Liabilities	**(14,566.50)**	**(29,984.95)**
Depreciation & Amortization	**95.53**	**573.18**
Operating Cash Flow	**119,121.09**	**161,827.80**
Investing Cash Flows		
Financing Cash Flow		
Net Cash Flows	**119,121.09**	**161,827.80**
Beginning Cash	**379,615.57**	**336,908.86**
Net Cash Flows	**119,121.09**	**161,827.80**
Ending Cash	**498,736.66**	**498,736.66**

The Golf Club at Cypress Head
Summary of All Units
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
165,391	169,907	97.%	155,197	107.%	Green Fees	658,137	733,555	90.%	639,263	103.%	1,259,601	1,193,841
91,119	83,386	109.%	81,769	111.%	Cart Fee	391,747	379,480	103.%	360,525	109.%	703,621	712,319
32,278	32,000	101.%	30,767	105.%	Merchandise	152,292	154,000	99.%	151,299	101.%	312,000	341,338
2,720	2,600	105.%	2,600	105.%	Handicap Fee	6,345	6,380	99.%	6,355	100.%	7,700	6,835
1,920	2,000	96.%	1,970	97.%	Lessons	6,921	8,000	87.%	7,685	90.%	26,850	13,416
2,050	1,500	137.%	1,454	141.%	Rental Clubs	6,873	5,699	121.%	5,437	126.%	9,769	13,823
10,474	8,250	127.%	7,861	133.%	Range	39,394	34,087	116.%	32,198	122.%	80,609	83,431
4,760	4,514	105.%	4,509	106.%	City Surcharge R & R	20,645	19,934	104.%	19,922	104.%	38,951	38,526
310,712	304,157	102.%	286,127	109.%	Total Revenues	1,282,353	1,341,135	96.%	1,222,685	105.%	2,439,100	2,403,529
					COST OF GOODS SOLD							
22,582	21,760	104.%	18,708	121.%	COGS - Merchandise	107,915	104,920	103.%	103,711	104.%	213,650	243,673
22,582	21,760	104.%	18,708	121.%	Total COGS	107,915	104,920	103.%	103,711	104.%	213,650	243,673
288,130	282,397	102.%	267,419	108.%	GROSS MARGIN	1,174,438	1,236,215	95.%	1,118,974	105.%	2,225,450	2,159,856
70.%	68.%	103.%	61.%	115.%	COGS - Merchandise %	71.%	68.%	104.%	69.%	103.%	68.%	841.%
					PAYROLL							
39,120	36,614	107.%	36,841	106.%	Gross Payroll - Salaried	225,328	219,686	103.%	219,352	103.%	439,372	455,794
54,031	54,742	99.%	50,181	108.%	Gross Payroll - Hourly	301,374	320,584	94.%	262,466	115.%	646,520	586,904
93,151	91,356	102.%	87,022	107.%	S/T Wages	526,702	540,270	97.%	481,818	109.%	1,085,892	1,042,698
6,916	6,989	99.%	6,476	107.%	Payroll Tax - FICA	39,293	41,331	95.%	36,932	106.%	83,071	77,028
252	342	74.%	453	56.%	Payroll Tax - UC	1,601	1,648	97.%	1,801	89.%	2,873	2,488
1,467	1,039	141.%	1,490	99.%	Payroll Tax - WC	8,859	5,901	150.%	9,377	94.%	12,105	18,582
7,343	7,531	97.%	1,548	474.%	Benefits	43,888	45,173	97.%	41,230	106.%	91,762	85,822
15,978	15,901	100.%	9,967	160.%	S/T Adders	93,642	94,053	100.%	89,340	105.%	189,810	183,921
109,129	107,256	102.%	96,989	113.%	TOTAL PAYROLL	620,344	634,323	98.%	571,158	109.%	1,275,702	1,226,618
					OPERATING EXPENSES							
0	100	0.%	118	0.%	Cart Supplies	210	400	52.%	403	52.%	450	295
956	800	120.%	530	180.%	Chemicals	5,794	4,800	121.%	4,162	139.%	9,600	9,131
217	0	0.%	271	80.%	Course Accessories	3,909	1,800	217.%	1,810	216.%	5,600	6,779
13,325	11,000	121.%	10,508	127.%	Fertilizer	38,348	33,100	116.%	29,486	130.%	60,100	53,060
0	700	0.%	0	0.%	Flowers/Decor	0	1,400	0.%	60	0.%	2,100	77
979	1,000	98.%	973	101.%	Fuel	8,150	8,700	94.%	8,273	99.%	21,100	18,580
0	0	0.%	229	0.%	Fungicides	4,684	4,600	102.%	4,714	99.%	6,600	6,537
984	1,500	66.%	3,047	32.%	Herbicides	10,257	15,900	65.%	15,880	65.%	35,900	29,998
0	1,200	0.%	1,062	0.%	Insecticides	(1,338)	1,200	(111.%)	5,579	(24.%)	12,800	1,718
0	500	0.%	786	0.%	Janitorial Supplies	2,492	1,800	138.%	2,066	121.%	3,600	5,228
0	175	0.%	0	0.%	Laundry/Uniforms	180	575	31.%	42	434.%	575	180
446	500	89.%	502	89.%	Office Supplies	3,232	2,800	115.%	2,815	115.%	4,450	6,481
0	0	0.%	0	0.%	Printing	1,348	1,900	71.%	1,598	84.%	3,100	2,258
0	3,250	0.%	3,250	0.%	Range Balls	3,625	3,250	112.%	3,250	112.%	6,500	7,250
0	0	0.%	0	0.%	Range Equipment	1,111	400	278.%	0	0.%	1,000	2,493
0	0	0.%	0	0.%	Range Expenses	98	1,200	8.%	1,182	8.%	2,175	734
2,375	0	0.%	0	0.%	Sand/Topdress	7,072	5,000	141.%	4,297	165.%	15,000	16,240
0	0	0.%	0	0.%	Seeds/Trees	2,995	5,000	60.%	3,520	85.%	7,900	4,895
158	0	0.%	40	396.%	Small Tools	664	600	111.%	40	1661.%	1,800	990
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
458	850	54.%	1,458	31.%	Supplies	1,904	2,060	92.%	5,287	36.%	3,240	2,307
0	500	0.%	875	0.%	Tournament Expense	372	2,650	14.%	4,349	9.%	3,050	1,138
142	250	57.%	292	49.%	Alarm System	1,264	1,000	126.%	1,002	126.%	1,900	2,430
556	0	0.%	0	0.%	Cart Repairs	958	50	1915.%	47	2043.%	750	1,255
2,767	1,150	241.%	1,181	234.%	Computer Service	14,613	6,900	212.%	10,019	146.%	13,800	26,880
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	6,000	6,600	91.%	6,075	99.%	13,200	12,000
2,330	50	4660.%	378	616.%	Guest Relations	4,960	2,210	224.%	5,418	92.%	2,360	5,733
0	0	0.%	0	0.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
1,239	540	229.%	1,872	66.%	Irrigation	5,622	3,240	174.%	2,572	219.%	6,480	9,327
0	0	0.%	0	0.%	Lesson Expense	0	600	0.%	583	0.%	1,200	0
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
0	0	0.%	0	0.%	Repair & Maint - Paths	838	2,000	42.%	2,901	29.%	4,000	1,677
3,992	2,750	145.%	1,721	232.%	Repair & Maint - Equipment	14,925	14,700	102.%	11,627	128.%	29,900	36,766
312	400	78.%	155	202.%	Repair & Maint - Building	7,193	2,400	300.%	7,365	98.%	4,800	10,411

The Golf Club at Cypress Head
Summary of All Units
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
0	7,141	0.%	7,141	0.%	Cart Lease	0	42,846	0.%	42,846	0.%	85,692	42,846
185	9,945	2.%	9,945	2.%	Equipment Lease	1,110	59,670	2.%	59,670	2.%	119,340	63,286
206	206	100.%	206	100.%	Off-Site Storage	1,030	1,236	83.%	1,236	83.%	2,472	2,266
914	950	96.%	1,000	91.%	Utilities - Electric	5,516	5,700	97.%	5,747	96.%	11,400	11,309
4,057	3,800	107.%	3,653	111.%	Utilities - Other	24,666	22,800	108.%	22,788	108.%	45,600	53,608
184	200	92.%	199	92.%	Utilities - Telephone/Fax	855	1,200	71.%	1,194	72.%	2,400	2,040
299	225	133.%	304	98.%	Utilities - Water	1,774	1,350	131.%	1,646	108.%	2,700	3,506
0	365	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,365	88.%	0	0.%	2,000	2,345
0	85	0.%	0	0.%	Adv/Promo - Promotional	342	490	70.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
4,328	0	0.%	0	0.%	Adv/Promo - Direct Mail	4,328	2,000	216.%	0	0.%	3,000	4,328
0	0	0.%	0	0.%	Adv/Promo - Special Events	0	250	0.%	0	0.%	500	0
461	500	92.%	1,492	31.%	Adv/Promo - Mktg/Bus Dev	1,990	3,000	66.%	8,802	23.%	6,000	7,653
0	0	0.%	0	0.%	Adv/Promo - Radio/TV	0	2,400	0.%	0	0.%	5,000	1,158
0	600	0.%	0	0.%	Adv/Promo - Website	1,500	4,000	38.%	0	0.%	8,000	4,250
464	400	116.%	432	107.%	Bank Charges	2,552	2,100	122.%	2,061	124.%	4,200	4,431
(106)	0	0.%	(172)	62.%	Cash Short/(Over)	(53)	0	0.%	(861)	6.%	0	(291)
240	330	73.%	240	100.%	Cell Phone	1,440	1,980	73.%	1,440	100.%	3,960	2,880
4,760	4,514	105.%	4,509	106.%	City Surcharge R & R	20,645	19,934	104.%	19,922	104.%	38,951	38,526
7,549	5,000	151.%	6,023	125.%	Credit Card Discounts	32,280	30,000	108.%	29,986	108.%	60,000	62,599
0	0	0.%	0	0.%	Donations	92	0	0.%	0	0.%	0	92
0	0	0.%	0	0.%	Dues & Subscriptions	285	540	53.%	540	53.%	1,140	2,281
82	160	51.%	75	109.%	Education & Training	82	625	13.%	1,142	7.%	785	302
284	50	567.%	77	366.%	Employee Relations	6,191	5,950	104.%	7,513	82.%	6,550	8,482
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
9,985	10,200	98.%	9,213	108.%	Insurance Expense	59,909	61,200	98.%	55,280	108.%	122,400	117,407
324	100	324.%	35	925.%	Member Relations	670	200	335.%	356	188.%	900	1,490
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
380	500	76.%	524	73.%	Payroll Processing Fee	2,816	2,950	95.%	3,018	93.%	5,650	5,948
157	100	157.%	214	73.%	Postage/Shipping	1,231	500	246.%	953	129.%	1,100	2,005
(30)	(30)	100.%	(30)	100.%	Tax/Licenses/Fees	520	(180)	(289.%)	(180)	(289.%)	(285)	530
291	50	582.%	211	138.%	Travel - Other	3,527	1,700	207.%	1,923	183.%	2,000	6,080
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
67,248	73,706	91.%	75,540	89.%	TOTAL OPERATING EXPENSES	346,064	434,141	80.%	432,464	80.%	858,535	767,246
111,753	101,435	110.%	94,890	118.%	EBITDA	208,030	167,750	124.%	115,351	180.%	91,213	165,991
6,790	6,790	100.%	6,592	103.%	Management Fee	40,739	40,740	100.%	39,552	103.%	81,480	80,291
6,790	6,790	100.%	6,592	103.%	Management Fees	40,739	40,740	100.%	39,552	103.%	81,480	80,291
23	23	100.%	23	100.%	Deprec - Mach & Equip	139	139	100.%	139	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	434	434	100.%	434	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	573	573	100.%	573	100.%	1,146	1,146
104,868	94,549	111.%	88,203	119.%	NET INCOME	166,719	126,437	132.%	75,226	222.%	8,587	84,554

The Golf Club at Cypress Head
Course Grounds
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
165,391	169,907	97.%	155,197	107.%	Green Fees	658,137	733,555	90.%	639,263	103.%	1,259,601	1,193,841
4,760	4,514	105.%	4,509	106.%	City Surcharge R & R	20,645	19,934	104.%	19,922	104.%	38,951	38,526
170,151	174,421	98.%	159,705	107.%	Total Revenues	678,782	753,489	90.%	659,186	103.%	1,298,552	1,232,367
170,151	174,421	98.%	159,705	107.%	GROSS MARGIN	678,782	753,489	90.%	659,186	103.%	1,298,552	1,232,367
					PAYROLL							
12,168	11,720	104.%	11,628	105.%	Gross Payroll - Salaried	70,934	70,318	101.%	68,899	103.%	140,637	140,651
27,741	28,772	96.%	24,302	114.%	Gross Payroll - Hourly	174,884	168,581	104.%	135,717	129.%	338,431	331,254
39,909	40,492	99.%	35,930	111.%	S/T Wages	245,818	238,899	103.%	204,616	120.%	479,068	471,905
2,969	3,098	96.%	2,667	111.%	Payroll Tax - FICA	18,257	18,276	100.%	15,155	120.%	36,649	34,971
93	119	78.%	164	57.%	Payroll Tax - UC	747	716	104.%	667	112.%	862	911
648	460	141.%	590	110.%	Payroll Tax - WC	4,109	2,609	157.%	3,845	107.%	5,340	8,034
2,851	3,286	87.%	(443)	(644.%)	Benefits	16,945	19,712	86.%	16,070	105.%	40,047	33,427
6,561	6,963	94.%	2,977	220.%	S/T Adders	40,058	41,313	97.%	35,738	112.%	82,898	77,343
46,470	47,455	98.%	38,908	119.%	TOTAL PAYROLL	285,876	280,212	102.%	240,354	119.%	561,966	549,248
					OPERATING EXPENSES							
956	800	120.%	530	180.%	Chemicals	5,794	4,800	121.%	4,162	139.%	9,600	9,131
217	0	0.%	271	80.%	Course Accessories	3,909	1,800	217.%	1,810	216.%	5,600	6,779
13,325	11,000	121.%	10,508	127.%	Fertilizer	38,348	33,100	116.%	29,486	130.%	60,100	53,060
0	700	0.%	0	0.%	Flowers/Decor	0	1,400	0.%	60	0.%	2,100	77
979	1,000	98.%	973	101.%	Fuel	8,150	8,700	94.%	8,273	99.%	21,100	18,580
0	0	0.%	229	0.%	Fungicides	4,684	4,600	102.%	4,714	99.%	6,600	6,537
984	1,500	66.%	3,047	32.%	Herbicides	10,257	15,900	65.%	15,880	65.%	35,900	29,998
0	1,200	0.%	1,062	0.%	Insecticides	(1,338)	1,200	(111.%)	5,579	(24.%)	12,800	1,718
2,375	0	0.%	0	0.%	Sand/Topdress	7,072	5,000	141.%	4,297	165.%	15,000	16,240
0	0	0.%	0	0.%	Seeds/Trees	2,995	5,000	60.%	3,520	85.%	7,900	4,895
158	0	0.%	40	396.%	Small Tools	664	600	111.%	40	1661.%	1,800	990
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
1,239	540	229.%	1,872	66.%	Irrigation	5,622	3,240	174.%	2,572	219.%	6,480	9,327
0	0	0.%	0	0.%	Repair & Maint - Paths	838	2,000	42.%	2,901	29.%	4,000	1,677
661	2,300	29.%	731	90.%	Repair & Maint - Equipment	10,054	13,800	73.%	7,254	139.%	27,600	28,040
42	200	21.%	200	21.%	Repair & Maint - Building	1,935	1,200	161.%	1,380	140.%	2,400	1,935
185	9,945	2.%	9,945	2.%	Equipment Lease	1,110	59,670	2.%	59,670	2.%	119,340	63,286
205	300	68.%	253	81.%	Utilities - Electric	1,477	1,800	82.%	1,597	92.%	3,600	3,241
1,993	1,800	111.%	1,394	143.%	Utilities - Other	10,195	10,800	94.%	9,621	106.%	21,600	23,986
299	225	133.%	304	98.%	Utilities - Water	1,774	1,350	131.%	1,646	108.%	2,700	3,506
82	160	51.%	75	109.%	Education & Training	82	625	13.%	540	15.%	785	82
0	0	0.%	0	0.%	Employee Relations	835	550	152.%	536	156.%	850	1,050
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
0	0	0.%	0	0.%	Tax/Licenses/Fees	465	0	0.%	0	0.%	0	655
23,700	31,670	75.%	31,434	75.%	TOTAL OPERATING EXPENSES	115,008	177,235	65.%	165,626	69.%	374,055	291,327
99,980	95,296	105.%	89,364	112.%	EBITDA	277,898	296,042	94.%	253,206	110.%	362,531	391,792
99,980	95,296	105.%	89,364	112.%	NET INCOME	277,898	296,042	94.%	253,206	110.%	362,531	391,792

The Golf Club at Cypress Head
Carts
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
91,119	83,386	109.%	81,769	111.%	Cart Fee	391,747	379,480	103.%	360,525	109.%	703,621	712,319
91,119	83,386	109.%	81,769	111.%	Total Revenues	391,747	379,480	103.%	360,525	109.%	703,621	712,319
91,119	83,386	109.%	81,769	111.%	GROSS MARGIN	391,747	379,480	103.%	360,525	109.%	703,621	712,319
					PAYROLL							
18,269	17,041	107.%	17,079	107.%	Gross Payroll - Hourly	86,319	99,587	87.%	84,084	103.%	202,577	170,227
18,269	17,041	107.%	17,079	107.%	S/T Wages	86,319	99,587	87.%	84,084	103.%	202,577	170,227
1,414	1,304	108.%	1,338	106.%	Payroll Tax - FICA	6,706	7,618	88.%	6,585	102.%	15,497	13,333
118	150	79.%	194	61.%	Payroll Tax - UC	475	435	109.%	607	78.%	1,191	1,100
273	194	141.%	285	96.%	Payroll Tax - WC	1,404	1,088	129.%	1,556	90.%	2,259	3,033
25	27	91.%	(398)	(6.%)	Benefits	152	161	95.%	79	191.%	322	321
1,831	1,675	109.%	1,418	129.%	S/T Adders	8,737	9,302	94.%	8,827	99.%	19,269	17,787
20,100	18,716	107.%	18,497	109.%	TOTAL PAYROLL	95,057	108,890	87.%	92,911	102.%	221,847	188,014
					OPERATING EXPENSES							
0	100	0.%	118	0.%	Cart Supplies	210	400	52.%	403	52.%	450	295
0	100	0.%	105	0.%	Supplies	102	450	23.%	462	22.%	950	335
556	0	0.%	0	0.%	Cart Repairs	958	50	1915.%	47	2043.%	750	1,255
0	7,141	0.%	7,141	0.%	Cart Lease	0	42,846	0.%	42,846	0.%	85,692	42,846
708	650	109.%	747	95.%	Utilities - Electric	4,040	3,900	104.%	4,150	97.%	7,800	8,068
1,264	7,991	16.%	8,111	16.%	TOTAL OPERATING EXPENSES	5,308	47,646	11.%	47,908	11.%	95,642	52,799
69,756	56,679	123.%	55,161	126.%	EBITDA	291,382	222,944	131.%	219,707	133.%	386,132	471,506
69,756	56,679	123.%	55,161	126.%	NET INCOME	291,382	222,944	131.%	219,707	133.%	386,132	471,506

The Golf Club at Cypress Head
Range
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
10,474	8,250	127.%	7,861	133.%	Range	39,394	34,087	116.%	32,198	122.%	80,609	83,431
10,474	8,250	127.%	7,861	133.%	Total Revenues	39,394	34,087	116.%	32,198	122.%	80,609	83,431
10,474	8,250	127.%	7,861	133.%	GROSS MARGIN	39,394	34,087	116.%	32,198	122.%	80,609	83,431
					OPERATING EXPENSES							
0	3,250	0.%	3,250	0.%	Range Balls	3,625	3,250	112.%	3,250	112.%	6,500	7,250
0	0	0.%	0	0.%	Range Equipment	1,111	400	278.%	0	0.%	1,000	2,493
0	0	0.%	0	0.%	Range Expenses	98	1,200	8.%	1,182	8.%	2,175	734
23	50	47.%	0	0.%	Repair & Maint - Equipment	23	300	8.%	1,532	2.%	600	44
23	3,300	1.%	3,250	1.%	TOTAL OPERATING EXPENSES	4,857	5,150	94.%	5,964	81.%	10,275	10,522
10,450	4,950	211.%	4,611	227.%	EBITDA	34,536	28,937	119.%	26,234	132.%	70,334	72,910
10,450	4,950	211.%	4,611	227.%	NET INCOME	34,536	28,937	119.%	26,234	132.%	70,334	72,910

The Golf Club at Cypress Head
Golf Shop
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
32,278	32,000	101.%	30,767	105.%	Merchandise	152,292	154,000	99.%	151,299	101.%	312,000	341,338
2,720	2,600	105.%	2,600	105.%	Handicap Fee	6,345	6,380	99.%	6,355	100.%	7,700	6,835
1,920	2,000	96.%	1,970	97.%	Lessons	6,921	8,000	87.%	7,685	90.%	26,850	13,416
2,050	1,500	137.%	1,454	141.%	Rental Clubs	6,873	5,699	121.%	5,437	126.%	9,769	13,823
38,968	38,100	102.%	36,791	106.%	Total Revenues	172,431	174,079	99.%	170,776	101.%	356,319	375,412
					COST OF GOODS SOLD							
22,582	21,760	104.%	18,708	121.%	COGS - Merchandise	107,915	104,920	103.%	103,711	104.%	213,650	243,673
22,582	21,760	104.%	18,708	121.%	Total COGS	107,915	104,920	103.%	103,711	104.%	213,650	243,673
16,386	16,340	100.%	18,083	91.%	GROSS MARGIN	64,515	69,159	93.%	67,065	96.%	142,669	131,739
70.%	68.%	103.%	61.%	115.%	COGS - Merchandise %	71.%	68.%	104.%	69.%	103.%	68.%	841.%
					PAYROLL							
4,531	3,713	122.%	4,830	94.%	Gross Payroll - Salaried	25,876	22,279	116.%	25,491	102.%	44,558	51,184
7,868	8,755	90.%	8,747	90.%	Gross Payroll - Hourly	39,401	51,402	77.%	41,824	94.%	103,479	84,012
12,399	12,468	99.%	13,577	91.%	S/T Wages	65,277	73,681	89.%	67,314	97.%	148,036	135,196
923	954	97.%	1,020	91.%	Payroll Tax - FICA	4,801	5,637	85.%	4,928	97.%	11,325	10,152
40	64	63.%	95	42.%	Payroll Tax - UC	212	280	76.%	297	72.%	554	424
192	142	135.%	234	82.%	Payroll Tax - WC	1,079	805	134.%	1,267	85.%	1,650	2,924
1,377	1,305	106.%	835	165.%	Benefits	8,196	7,826	105.%	7,230	113.%	15,898	15,593
2,532	2,464	103.%	2,183	116.%	S/T Adders	14,288	14,547	98.%	13,722	104.%	29,427	29,094
14,931	14,933	100.%	15,760	95.%	TOTAL PAYROLL	79,565	88,228	90.%	81,036	98.%	177,463	164,290
					OPERATING EXPENSES							
0	0	0.%	0	0.%	Printing	1,300	1,900	68.%	1,598	81.%	3,100	2,210
458	750	61.%	1,353	34.%	Supplies	1,803	1,610	112.%	4,825	37.%	2,290	1,972
0	500	0.%	875	0.%	Tournament Expense	372	2,650	14.%	4,349	9.%	3,050	1,138
0	0	0.%	0	0.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
0	0	0.%	0	0.%	Lesson Expense	0	600	0.%	583	0.%	1,200	0
0	0	0.%	0	0.%	Education & Training	0	0	0.%	602	0.%	0	0
458	1,250	37.%	2,228	21.%	TOTAL OPERATING EXPENSES	9,596	13,160	73.%	18,369	52.%	16,490	12,145
997	157	634.%	96	1043.%	EBITDA	(24,646)	(32,229)	76.%	(32,340)	76.%	(51,284)	(44,696)
997	157	634.%	96	1043.%	NET INCOME	(24,646)	(32,229)	76.%	(32,340)	76.%	(51,284)	(44,696)

The Golf Club at Cypress Head
G A
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
15,016	14,273	105.%	14,250	105.%	Gross Payroll - Salaried	86,729	85,639	101.%	84,520	103.%	171,277	177,889
153	173	88.%	54	284.%	Gross Payroll - Hourly	770	1,014	76.%	841	92.%	2,034	1,411
15,169	14,446	105.%	14,304	106.%	S/T Wages	87,499	86,653	101.%	85,361	103.%	173,311	179,299
1,062	1,105	96.%	1,000	106.%	Payroll Tax - FICA	6,454	6,629	97.%	7,273	89.%	13,258	12,380
1	2	39.%	1	63.%	Payroll Tax - UC	113	132	86.%	128	88.%	141	(1)
237	164	144.%	246	96.%	Payroll Tax - WC	1,557	946	165.%	1,945	80.%	1,932	3,116
2,448	2,301	106.%	1,061	231.%	Benefits	14,761	13,808	107.%	14,793	100.%	28,042	28,920
3,747	3,572	105.%	2,308	162.%	S/T Adders	22,885	21,516	106.%	24,139	95.%	43,373	44,416
18,915	18,018	105.%	16,612	114.%	TOTAL PAYROLL	110,384	108,168	102.%	109,500	101.%	216,683	223,715
					OPERATING EXPENSES							
0	500	0.%	786	0.%	Janitorial Supplies	2,492	1,800	138.%	2,066	121.%	3,600	5,228
0	175	0.%	0	0.%	Laundry/Uniforms	180	575	31.%	42	434.%	575	180
446	500	89.%	502	89.%	Office Supplies	3,232	2,800	115.%	2,815	115.%	4,450	6,481
0	0	0.%	0	0.%	Printing	48	0	0.%	0	0.%	0	48
142	250	57.%	292	49.%	Alarm System	1,264	1,000	126.%	1,002	126.%	1,900	2,430
2,767	1,150	241.%	1,181	234.%	Computer Service	14,613	6,900	212.%	10,019	146.%	13,800	26,880
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	6,000	6,600	91.%	6,075	99.%	13,200	12,000
2,330	50	4660.%	378	616.%	Guest Relations	4,960	2,210	224.%	5,418	92.%	2,360	5,733
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
3,308	400	827.%	990	334.%	Repair & Maint - Equipment	4,848	600	808.%	2,841	171.%	1,700	8,682
271	200	135.%	(45)	(601.%)	Repair & Maint - Building	5,257	1,200	438.%	5,985	88.%	2,400	8,476
206	206	100.%	206	100.%	Off-Site Storage	1,030	1,236	83.%	1,236	83.%	2,472	2,266
2,064	2,000	103.%	2,259	91.%	Utilities - Other	14,471	12,000	121.%	13,167	110.%	24,000	29,622
184	200	92.%	199	92.%	Utilities - Telephone/Fax	855	1,200	71.%	1,194	72.%	2,400	2,040
464	400	116.%	432	107.%	Bank Charges	2,552	2,100	122.%	2,061	124.%	4,200	4,431
(106)	0	0.%	(172)	62.%	Cash Short/(Over)	(53)	0	0.%	(861)	6.%	0	(291)
240	330	73.%	240	100.%	Cell Phone	1,440	1,980	73.%	1,440	100.%	3,960	2,880
4,760	4,514	105.%	4,509	106.%	City Surcharge R & R	20,645	19,934	104.%	19,922	104.%	38,951	38,526
7,549	5,000	151.%	6,023	125.%	Credit Card Discounts	32,280	30,000	108.%	29,986	108.%	60,000	62,599
0	0	0.%	0	0.%	Donations	92	0	0.%	0	0.%	0	92
0	0	0.%	0	0.%	Dues & Subscriptions	285	540	53.%	540	53.%	1,140	2,281
0	0	0.%	0	0.%	Education & Training	0	0	0.%	0	0.%	0	220
284	50	567.%	77	366.%	Employee Relations	5,355	5,400	99.%	6,978	77.%	5,700	7,432
9,985	10,200	98.%	9,213	108.%	Insurance Expense	59,909	61,200	98.%	55,280	108.%	122,400	117,407
324	100	324.%	35	925.%	Member Relations	670	200	335.%	356	188.%	900	1,490
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
380	500	76.%	524	73.%	Payroll Processing Fee	2,816	2,950	95.%	3,018	93.%	5,650	5,948
157	100	157.%	214	73.%	Postage/Shipping	1,231	500	246.%	953	129.%	1,100	2,005
(30)	(30)	100.%	(30)	100.%	Tax/Licenses/Fees	55	(180)	(31.%)	(180)	(31.%)	(285)	(125)
291	50	582.%	211	138.%	Travel - Other	3,527	1,700	207.%	1,923	183.%	2,000	6,080
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
37,014	27,945	132.%	29,025	128.%	TOTAL OPERATING EXPENSES	201,929	176,945	114.%	185,795	109.%	336,073	379,455
(55,929)	(45,963)	122.%	(45,637)	123.%	EBITDA	(312,313)	(285,113)	110.%	(295,295)	106.%	(552,756)	(603,170)
6,790	6,790	100.%	6,592	103.%	Management Fee	40,739	40,740	100.%	39,552	103.%	81,480	80,291
6,790	6,790	100.%	6,592	103.%	Management Fees	40,739	40,740	100.%	39,552	103.%	81,480	80,291
23	23	100.%	23	100.%	Deprec - Mach & Equip	139	139	100.%	139	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	434	434	100.%	434	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	573	573	100.%	573	100.%	1,146	1,146
(62,815)	(52,849)	119.%	(52,324)	120.%	NET INCOME	(353,625)	(326,427)	108.%	(335,421)	105.%	(635,383)	(684,607)

The Golf Club at Cypress Head
Marketing
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
7,405	6,908	107.%	6,132	121.%	Gross Payroll - Salaried	41,789	41,450	101.%	40,443	103.%	82,900	86,070
7,405	6,908	107.%	6,132	121.%	S/T Wages	41,789	41,450	101.%	40,443	103.%	82,900	86,070
548	528	104.%	451	122.%	Payroll Tax - FICA	3,075	3,171	97.%	2,992	103.%	6,342	6,191
0	8	0.%	0	0.%	Payroll Tax - UC	54	85	63.%	102	53.%	123	54
118	79	150.%	135	87.%	Payroll Tax - WC	710	453	157.%	763	93.%	924	1,474
642	611	105.%	494	130.%	Benefits	3,834	3,666	105.%	3,057	125.%	7,454	7,562
1,307	1,226	107.%	1,080	121.%	S/T Adders	7,673	7,375	104.%	6,914	111.%	14,843	15,281
8,712	8,134	107.%	7,212	121.%	TOTAL PAYROLL	49,462	48,825	101.%	47,357	104.%	97,743	101,351
					OPERATING EXPENSES							
0	365	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,365	88.%	0	0.%	2,000	2,345
0	85	0.%	0	0.%	Adv/Promo - Promotional	342	490	70.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
4,328	0	0.%	0	0.%	Adv/Promo - Direct Mail	4,328	2,000	216.%	0	0.%	3,000	4,328
0	0	0.%	0	0.%	Adv/Promo - Special Events	0	250	0.%	0	0.%	500	0
461	500	92.%	1,492	31.%	Adv/Promo - Mktg/Bus Dev	1,990	3,000	66.%	8,802	23.%	6,000	7,653
0	0	0.%	0	0.%	Adv/Promo - Radio/TV	0	2,400	0.%	0	0.%	5,000	1,158
0	600	0.%	0	0.%	Adv/Promo - Website	1,500	4,000	38.%	0	0.%	8,000	4,250
4,789	1,550	309.%	1,492	321.%	TOTAL OPERATING EXPENSES	9,365	14,005	67.%	8,802	106.%	26,000	21,000
(13,501)	(9,684)	139.%	(8,704)	155.%	EBITDA	(58,827)	(62,830)	94.%	(56,159)	105.%	(123,743)	(122,351)
(13,501)	(9,684)	139.%	(8,704)	155.%	NET INCOME	(58,827)	(62,830)	94.%	(56,159)	105.%	(123,743)	(122,351)

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
256,511	253,293	101.%	236,966	108.%	Green Fees & Cart Fees	1,049,884	1,113,035	94.%	999,788	105.%	1,963,221	1,906,160
32,278	32,000	101.%	30,767	105.%	Merchandise	152,292	154,000	99.%	151,299	101.%	312,000	341,338
6,690	6,100	110.%	6,024	111.%	Other Pro Shop	20,139	20,079	100.%	19,477	103.%	44,319	34,074
10,474	8,250	127.%	7,861	133.%	Range	39,394	34,087	116.%	32,198	122.%	80,609	83,431
4,760	4,514	105.%	4,509	106.%	Other Operating Revenues	20,645	19,934	104.%	19,922	104.%	38,951	38,526
310,712	304,157	102.%	286,127	109.%	TOTAL REVENUE	1,282,353	1,341,135	96.%	1,222,685	105.%	2,439,100	2,403,529
					COST OF SALES							
22,582	21,760	104.%	18,708	121.%	Merchandise	107,915	104,920	103.%	103,711	104.%	213,650	243,673
22,582	21,760	104.%	18,708	121.%	TOTAL COGS	107,915	104,920	103.%	103,711	104.%	213,650	243,673
					PAYROLL							
46,470	47,455	98.%	38,908	119.%	Course and Grounds	285,876	280,212	102.%	240,354	119.%	561,966	549,248
20,100	18,716	107.%	18,497	109.%	Carts, Range, Starters, Etc.	95,057	108,890	87.%	92,911	102.%	221,847	188,014
14,931	14,933	100.%	15,760	95.%	Pro Shop	79,565	88,228	90.%	81,036	98.%	177,463	164,290
18,915	18,018	105.%	16,612	114.%	General and Administrative	110,384	108,168	102.%	109,500	101.%	216,683	223,715
8,712	8,134	107.%	7,212	121.%	Marketing	49,462	48,825	101.%	47,357	104.%	97,743	101,351
109,129	107,256	102.%	96,989	113.%	TOTAL PAYROLL	620,344	634,323	98.%	571,158	109.%	1,275,702	1,226,618
					OPERATING EXPENSES							
23,700	31,670	75.%	31,434	75.%	Course and Grounds	115,008	177,235	65.%	165,626	69.%	374,055	291,327
1,288	11,291	11.%	11,361	11.%	Carts, Range, Starters, Etc.	10,166	52,796	19.%	53,872	19.%	105,917	63,320
458	1,250	37.%	2,228	21.%	Pro Shop	9,596	13,160	73.%	18,369	52.%	16,490	12,145
37,014	27,945	132.%	29,025	128.%	General and Administrative	201,929	176,945	114.%	185,795	109.%	336,073	379,455
4,789	1,550	309.%	1,492	321.%	Marketing	9,365	14,005	67.%	8,802	106.%	26,000	21,000
67,248	73,706	91.%	75,540	89.%	TOTAL OPERATING EXPENSES	346,064	434,141	80.%	432,464	80.%	858,535	767,246
198,959	202,722	98.%	191,236	104.%	TOTAL EXPENSES	1,074,323	1,173,384	92.%	1,107,333	97.%	2,347,887	2,237,538
111,753	101,435	110.%	94,890	118.%	EBITDA	208,030	167,750	124.%	115,351	180.%	91,213	165,991

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
111,753	101,435	110.%	94,890	118.%	EBITDA	208,030	167,750	124.%	115,351	180.%	91,213	165,991
(6,790)	(6,790)	100.%	(6,592)	103.%	MANAGEMENT FEES	(40,739)	(40,740)	100.%	(39,552)	103.%	(81,480)	(80,291)
					OTHER INCOME (EXPENSE)							
(96)	(96)	100.%	(96)	100.%	Depreciation & Amortization	(573)	(573)	100.%	(573)	100.%	(1,146)	(1,146)
(96)	(96)	100.%	(96)	100.%	TOTAL OTHER INCOME (EXPENSE)	(573)	(573)	100.%	(573)	100.%	(1,146)	(1,146)
104,868	94,549	111.%	88,203	119.%	NET INCOME	166,719	126,437	132.%	75,226	222.%	8,587	84,554
4,978	5,099	98.%	5,059	98.%	Paid Rounds	20,928	22,542	93.%	21,683	97.%	41,615	40,789
577	445	130.%	425	136.%	Annual Pass Rounds	2,635	2,250	117.%	2,219	119.%	4,907	4,702
294	318	92.%	318	92.%	Other Rounds	1,526	1,553	98.%	1,553	98.%	2,739	3,074
5,849	5,862	100.%	5,802	101.%	Total Rounds	25,089	26,345	95.%	25,455	99.%	49,261	48,565
62	60	105.%	57	110.%	Revenue/Paid Rounds	61	59	103.%	56	109.%	59	701
53	52	102.%	49	108.%	Revenue/Total Rounds	51	51	100.%	48	106.%	50	587

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

General Ledger

Ranges: From: To:
Date: 3/1/2025 3/31/2025
Account: First Last

Sorted By: Account
Include: Posting, Unit
Print Currency In: Functional (Z-US$)

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	10020-5950-900	Cash - Course Depository NEW	$339,681.61	$314,541.07	$197,067.54	$117,473.53	$457,155.14
	10050-5950-900	Cash - Course Payroll BMO	$38,583.96	$84,000.00	$82,352.44	$1,647.56	$40,231.52
	10100-5950-900	Cash - Course Other	$850.00	$0.00	$0.00	$0.00	$850.00
	10180-5950-900	Cash - Pro Shop Bank	$500.00	$0.00	$0.00	$0.00	$500.00
	11160-5950-900	A/R Member	$1,819.91	$24,166.71	$23,509.03	$657.68	$2,477.59
	12000-5950-900	Inventory - Merchandise	$127,318.70	$29,074.09	$27,625.10	$1,448.99	$128,767.69
	13020-5950-900	Prepaid Insurance	$39,264.33	$0.00	$9,984.79	($9,984.79)	$29,279.54
	13040-5950-900	Prepaid Exp - Other	$30,957.94	$1,290.00	$1,768.71	($478.71)	$30,479.23
	20100-5950-900	Machinery & Equipment	$5,550.40	$0.00	$0.00	$0.00	$5,550.40
	20160-5950-900	Buildings and Improvements	$30,597.54	$0.00	$0.00	$0.00	$30,597.54
	22040-5950-900	Accum. Deprec - Mach & Equip	($5,387.42)	$0.00	$23.12	($23.12)	($5,410.54)
	22080-5950-900	Accum. Deprec - Buildings	($28,497.60)	$0.00	$72.41	($72.41)	($28,570.01)
	30000-5950-900	Accts Pay - Trade	($94,726.09)	$94,555.87	$104,346.99	($9,791.12)	($104,517.21)
	30040-5950-900	Accts Pay - Other	($185,360.44)	$1,066.12	$1,610.23	($544.11)	($185,904.55)
	31000-5950-900	Accrued Expenses	($497.78)	$497.78	$0.00	$497.78	$0.00
	31020-5950-900	Accrued Payroll	($38,631.54)	$21,483.50	$30,101.38	($8,617.88)	($47,249.42)
	31080-5950-900	Accrued Tips Payable	$0.00	$388.00	$496.00	($108.00)	($108.00)
	31220-5950-900	Accrued Sales Tax	($16,224.39)	$16,224.39	$18,028.64	($1,804.25)	($18,028.64)
	31400-5950-900	Accrued City Surcharge	$0.00	$4,759.69	$4,759.69	$0.00	$0.00
	32000-5950-900	Deferred Rev - Rainchecks	($11,083.65)	$2,028.19	$880.48	$1,147.71	($9,935.94)
	32020-5950-900	Deferred Rev - Outing Deposits	($14,608.55)	$0.00	$5,198.73	($5,198.73)	($19,807.28)
	32040-5950-900	Deferred Rev - Legacy GF Passes	($20,250.51)	$2,893.03	$0.00	$2,893.03	($17,357.48)
	32050-5950-900	Deferred Revenue - Cypress GF Passes	($45,265.56)	$7,105.47	$3,238.12	$3,867.35	($41,398.21)
	32070-5950-900	Deferred Rev - Gift Cards	($35,062.51)	$2,797.09	$221.77	$2,575.32	($32,487.19)
	32100-5950-900	Deferred Rev - Credit Books	($11,879.85)	$1,337.14	$1,288.00	$49.14	($11,830.71)
	32120-5950-900	Deferred Rev - Trail Fee Pass	($45,794.84)	$9,232.68	$0.00	$9,232.68	($36,562.16)
	49020-5950-900	Retained Earnings - Current	($2.72)	$0.00	$0.00	$0.00	($2.72)
	50000-5950-100	Green Fees - Annual Pass	($42,730.82)	$0.00	$9,998.50	($9,998.50)	($52,729.32)
	5002A-5950-100	Green Fee - Annual	$0.00	$0.32	$0.32	$0.00	$0.00
	50030-5950-100	Green Fees - League	$0.00	$0.00	$0.32	($0.32)	($0.32)
	5003A-5950-100	Green Fee - Group	($53,501.22)	$0.00	$20,715.30	($20,715.30)	($74,216.52)
	50040-5950-100	Green Fees - Member	($227.36)	$0.00	$825.78	($825.78)	($1,053.14)
	5006A-5950-100	Green Fee - Junior	($4,987.71)	$0.00	$716.66	($716.66)	($5,704.37)
	50070-5950-100	Green Fees - (surcharge)	($15,887.11)	$4,759.69	$9,519.38	($4,759.69)	($20,646.80)
	5007A-5950-100	Green Fee - League	($35,784.25)	$0.00	$10,642.62	($10,642.62)	($46,426.87)
	5010A-5950-100	Green Fee - Non-Resident (Standard)	($102,440.23)	$0.00	$37,329.80	($37,329.80)	($139,770.03)
	5012A-5950-100	Green Fee - Outing	($29,045.94)	$0.00	$12,096.06	($12,096.06)	($41,142.00)
	5014A-5950-100	Green Fee - Resident	($105,965.75)	$12,574.83	$45,618.86	($33,044.03)	($139,009.78)
	5015A-5950-100	Green Fee - Senior	($99,839.53)	$0.00	$33,626.16	($33,626.16)	($133,465.69)
	5019A-5950-100	Green Fee - Wholesale	($2,335.43)	$0.00	$1,636.52	($1,636.52)	($3,971.95)
	50500-5950-200	Cart Fee 18	($257,458.16)	$0.00	$81,886.51	($81,886.51)	($339,344.67)
	50520-5950-200	Cart Fee - Annual Trail	($43,170.02)	$0.00	$9,232.68	($9,232.68)	($52,402.70)
	52090-5950-600	Handicap Fee	($3,625.00)	$0.00	$2,720.00	($2,720.00)	($6,345.00)
	52150-5950-600	Lessons	($5,001.45)	$0.00	$1,920.00	($1,920.00)	($6,921.45)
	52280-5950-600	Rental Clubs	($4,822.56)	$0.00	$2,050.00	($2,050.00)	($6,872.56)
	52310-5950-600	Retail	($120,013.46)	$0.00	$32,278.08	($32,278.08)	($152,291.54)
	53050-5950-220	Range Pass Revenue	($28,919.64)	$0.00	$10,473.88	($10,473.88)	($39,393.52)
	56120-5950-100	City Surcharge R & R	($15,885.12)	$0.00	$4,759.69	($4,759.69)	($20,644.81)
	60000-5950-600	COGS - Merchandise - Accessories	$85,333.37	$22,582.10	$0.00	$22,582.10	$107,915.47
	70000-5950-100	Gross Payroll - Salaried	$58,765.45	$14,916.14	$2,747.71	$12,168.43	$70,933.88
	70000-5950-600	Gross Payroll - Salaried	$21,345.34	$5,387.63	$856.88	$4,530.75	$25,876.09
	70000-5950-900	Gross Payroll - Salaried	$71,713.09	$18,309.10	$3,293.34	$15,015.76	$86,728.85
	70000-5950-950	Gross Payroll - Salaried	$34,383.89	$8,791.63	$1,386.54	$7,405.09	$41,788.98

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	70010-5950-100	Gross Payroll - Hourly	$147,143.28	$34,020.23	$6,279.52	$27,740.71	$174,883.99
	70010-5950-200	Gross Payroll - Hourly	$68,050.24	$21,899.66	$3,630.68	$18,268.98	$86,319.22
	70010-5950-600	Gross Payroll - Hourly	$31,532.83	$9,614.01	$1,745.67	$7,868.34	$39,401.17
	70010-5950-900	Gross Payroll - Hourly	$617.23	$169.22	$16.47	$152.75	$769.98
	71000-5950-100	Payroll Tax - FICA	$15,288.26	$3,659.64	$690.60	$2,969.04	$18,257.30
	71000-5950-200	Payroll Tax - FICA	$5,291.84	$1,691.87	$277.74	$1,414.13	$6,705.97
	71000-5950-600	Payroll Tax - FICA	$3,877.28	$1,122.55	$199.08	$923.47	$4,800.75
	71000-5950-900	Payroll Tax - FICA	$5,392.38	$1,314.92	$253.20	$1,061.72	$6,454.10
	71000-5950-950	Payroll Tax - FICA	$2,527.34	$653.83	$106.07	$547.76	$3,075.10
	71010-5950-100	Payroll Tax - UC	$653.74	$92.76	$0.00	$92.76	$746.50
	71010-5950-200	Payroll Tax - UC	$356.60	$118.42	$0.00	$118.42	$475.02
	71010-5950-600	Payroll Tax - UC	$172.53	$39.91	$0.00	$39.91	$212.44
	71010-5950-900	Payroll Tax - UC	$112.56	$0.59	$0.00	$0.59	$113.15
	71010-5950-950	Payroll Tax - UC	$53.66	$0.00	$0.00	$0.00	$53.66
	71020-5950-100	Payroll Tax - WC	$3,460.57	$648.20	$0.00	$648.20	$4,108.77
	71020-5950-200	Payroll Tax - WC	$1,131.28	$273.10	$0.00	$273.10	$1,404.38
	71020-5950-600	Payroll Tax - WC	$887.73	$191.57	$0.00	$191.57	$1,079.30
	71020-5950-900	Payroll Tax - WC	$1,320.58	$236.75	$0.00	$236.75	$1,557.33
	71020-5950-950	Payroll Tax - WC	$591.81	$117.82	$0.00	$117.82	$709.63
	71030-5950-100	Benefits	$14,094.04	$8,157.95	$5,306.61	$2,851.34	$16,945.38
	71030-5950-200	Benefits	$127.05	$944.79	$919.85	$24.94	$151.99
	71030-5950-600	Benefits	$6,818.54	$2,580.86	$1,203.70	$1,377.16	$8,195.70
	71030-5950-900	Benefits	$12,313.04	$5,234.08	$2,786.31	$2,447.77	$14,760.81
	71030-5950-950	Benefits	$3,192.72	$886.36	$244.84	$641.52	$3,834.24
	80110-5950-200	Cart Supplies	$209.63	$0.00	$0.00	$0.00	$209.63
	80120-5950-100	Chemicals	$4,837.62	$956.46	$0.00	$956.46	$5,794.08
	80170-5950-100	Course Accessories	$3,691.80	$216.78	$0.00	$216.78	$3,908.58
	80230-5950-100	Fertilizer	$25,023.01	$13,325.26	$0.00	$13,325.26	$38,348.27
	80270-5950-100	Fuel	$7,170.91	$979.21	$0.00	$979.21	$8,150.12
	80280-5950-100	Fungicides	$4,683.74	$0.00	$0.00	$0.00	$4,683.74
	80320-5950-100	Herbicides	$9,272.66	$984.20	$0.00	$984.20	$10,256.86
	80370-5950-100	Insecticides	($1,337.77)	$0.00	$0.00	$0.00	($1,337.77)
	80380-5950-900	Janitorial Supplies	$2,492.38	$0.00	$0.00	$0.00	$2,492.38
	80420-5950-900	Laundry/Uniforms	$180.30	$0.00	$0.00	$0.00	$180.30
	80520-5950-900	Office Supplies	$2,785.13	$446.43	$0.00	$446.43	$3,231.56
	80590-5950-600	Printing	$1,300.00	$0.00	$0.00	$0.00	$1,300.00
	80590-5950-900	Printing	$48.44	$0.00	$0.00	$0.00	$48.44
	80610-5950-220	Range Balls	$3,625.00	$0.00	$0.00	$0.00	$3,625.00
	80620-5950-220	Range Equipment	$1,110.73	$0.00	$0.00	$0.00	$1,110.73
	80630-5950-220	Range Expenses	$98.19	$0.00	$0.00	$0.00	$98.19
	80690-5950-100	Sand/Topdress	$4,697.26	$2,375.09	$0.00	$2,375.09	$7,072.35
	80710-5950-100	Seeds/Trees	$2,994.60	$0.00	$0.00	$0.00	$2,994.60
	80730-5950-100	Small Tools	$505.76	$158.13	$0.00	$158.13	$663.89
	80780-5950-200	Supplies	$101.50	$0.00	$0.00	$0.00	$101.50
	80780-5950-600	Supplies	$1,344.48	$458.20	$0.00	$458.20	$1,802.68
	80810-5950-600	Tournament Expense	$371.78	$0.00	$0.00	$0.00	$371.78
	81010-5950-900	Alarm System	$1,122.00	$142.00	$0.00	$142.00	$1,264.00
	81090-5950-200	Cart Repairs	$401.90	$555.67	$0.00	$555.67	$957.57
	81130-5950-900	Computer Service	$11,846.51	$2,766.70	$0.00	$2,766.70	$14,613.21
	81140-5950-900	Contract Cleaning	$5,000.00	$1,000.00	$0.00	$1,000.00	$6,000.00
	81200-5950-900	Guest Relations	$2,630.00	$2,330.00	$0.00	$2,330.00	$4,960.00
	81220-5950-600	Handicap Expense	$6,121.50	$0.00	$0.00	$0.00	$6,121.50
	81250-5950-100	Irrigation	$4,383.34	$1,238.87	$0.00	$1,238.87	$5,622.21
	81340-5950-100	Repair & Maint - Paths	$838.40	$0.00	$0.00	$0.00	$838.40
	81350-5950-100	Repair & Maint - Equipment	$9,393.16	$907.88	$247.08	$660.80	$10,053.96
	81350-5950-220	Repair & Maint - Equipment	$0.00	$23.45	$0.00	$23.45	$23.45
	81350-5950-900	Repair & Maint - Equipment	$1,539.50	$3,308.23	$0.00	$3,308.23	$4,847.73
	81360-5950-100	Repair & Maint - Building	$1,893.70	$41.72	$0.00	$41.72	$1,935.42
	81360-5950-900	Repair & Maint - Building	$4,986.70	$270.61	$0.00	$270.61	$5,257.31
	82020-5950-100	Equipment Lease	$925.00	$185.00	$0.00	$185.00	$1,110.00

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	82060-5950-900	Off-Site Storage	$824.00	$206.00	$0.00	$206.00	$1,030.00
	83000-5950-100	Utlities - Electric	$1,271.13	$205.46	$0.00	$205.46	$1,476.59
	83000-5950-200	Utilities - Electric	$3,331.34	$708.38	$0.00	$708.38	$4,039.72
	83020-5950-100	Utlities - Other	$8,202.55	$1,992.70	$0.00	$1,992.70	$10,195.25
	83020-5950-900	Utilities - Other	$12,406.32	$2,561.99	$497.62	$2,064.37	$14,470.69
	83030-5950-900	Utilities - Telephone/Fax	$671.07	$727.94	$544.27	$183.67	$854.74
	83050-5950-100	Utlities - Water	$1,475.28	$298.52	$0.00	$298.52	$1,773.80
	84020-5950-950	Adv/Promo - Direct Mail	$0.00	$4,328.00	$0.00	$4,328.00	$4,328.00
	84040-5950-950	Adv/Promo - Mktg/Bus Dev	$1,529.25	$460.52	$0.00	$460.52	$1,989.77
	84070-5950-950	Adv/Promo - Organizations	$1,205.00	$0.00	$0.00	$0.00	$1,205.00
	84080-5950-950	Adv/Promo - Promotional	$342.20	$0.00	$0.00	$0.00	$342.20
	84110-5950-950	Adv/Promo - Website	$1,500.00	$0.00	$0.00	$0.00	$1,500.00
	85020-5950-900	Bank Charges	$2,088.48	$463.51	$0.00	$463.51	$2,551.99
	85050-5950-900	Cash Short/(Over)	$53.11	$51.88	$158.09	($106.21)	($53.10)
	85060-5950-900	Cell Phone	$1,200.00	$240.00	$0.00	$240.00	$1,440.00
	85070-5950-900	City Surcharge R & R	$15,885.12	$4,759.69	$0.00	$4,759.69	$20,644.81
	85120-5950-900	Credit Card Discounts	$24,731.56	$7,735.90	$187.05	$7,548.85	$32,280.41
	85140-5950-900	Donations	$91.97	$0.00	$0.00	$0.00	$91.97
	85150-5950-900	Dues & Subscriptions	$285.00	$0.00	$0.00	$0.00	$285.00
	85160-5950-100	Education & Training	$0.00	$82.00	$0.00	$82.00	$82.00
	85190-5950-100	Employee Relations	$835.25	$0.00	$0.00	$0.00	$835.25
	85190-5950-900	Employee Relations	$5,071.55	$443.47	$159.75	$283.72	$5,355.27
	85200-5950-100	Employee Testing	$85.66	$0.00	$0.00	$0.00	$85.66
	85280-5950-900	Insurance Expense	$49,923.95	$9,984.79	$0.00	$9,984.79	$59,908.74
	85320-5950-900	Member Relations	$346.55	$323.65	$0.00	$323.65	$670.20
	85390-5950-900	O/S - Accounting	$11,875.00	$0.00	$0.00	$0.00	$11,875.00
	85480-5950-900	Payroll Processing Fee	$2,435.16	$380.42	$0.00	$380.42	$2,815.58
	85490-5950-900	Postage/Shipping	$1,073.85	$156.83	$0.00	$156.83	$1,230.68
	85610-5950-100	Tax/Licenses/Fees	$465.00	$0.00	$0.00	$0.00	$465.00
	85610-5950-900	Tax/Licenses/Fees	$85.00	$0.00	$30.00	($30.00)	$55.00
	85720-5950-900	Travel - Other	$3,235.89	$290.78	$0.00	$290.78	$3,526.67
	90000-5950-900	Management Fee	$33,948.80	$6,789.76	$0.00	$6,789.76	$40,738.56
	98020-5950-900	Deprec - Mach & Equip	$115.60	$23.12	$0.00	$23.12	$138.72
	98040-5950-900	Deprec - Buildings	$362.05	$72.41	$0.00	$72.41	$434.46
	R002A-5950-100	Rounds - Annual	18,931.00	577.00	0.00	577.00	19,508.00
	R003A-5950-100	Rounds - Group	22,254.00	664.00	0.00	664.00	22,918.00
	R005A-5950-100	Rounds - Green Fee - Hotel	44.00	0.00	0.00	0.00	44.00
	R006A-5950-100	Rounds - Green Fee - Junior	3,177.00	115.00	0.00	115.00	3,292.00
	R007A-5950-100	Rounds - Green Fee - League	18,513.00	447.00	0.00	447.00	18,960.00
	R010A-5950-100	Rounds - Green Fee - Non-Resident (Standard)	16,515.00	879.00	0.00	879.00	17,394.00
	R011A-5950-100	Rounds - Green Fee - Non-Revenue	1,078.00	20.00	0.00	20.00	1,098.00
	R012A-5950-100	Rounds - Green Fee - Outing	12,556.00	330.00	0.00	330.00	12,886.00
	R014A-5950-100	Rounds - Resident	78,541.00	1,657.00	0.00	1,657.00	80,198.00
	R015A-5950-100	Rounds - Green Fee - Senior	33,178.00	834.00	0.00	834.00	34,012.00
	R016A-5950-100	Rounds - Green Fee - Staff	7,719.00	217.00	0.00	217.00	7,936.00
	R017A-5950-100	Rounds - Green Fee - Trade	4,339.00	57.00	0.00	57.00	4,396.00
	R018A-5950-100	Rounds - Green Fee - Twilight	31.00	0.00	0.00	0.00	31.00
	R019A-5950-100	Rounds - Green Fee - Wholesale	720.00	52.00	0.00	52.00	772.00
	RCMWD-5950-100	Rounds - Complimentary - Weekday	15,846.00	0.00	0.00	0.00	15,846.00
	REMWD-5950-100	Rounds - Employee - Weekday	21,589.00	0.00	0.00	0.00	21,589.00
	RMBWD-5950-100	Rounds - Member - Weekday	80,170.00	0.00	0.00	0.00	80,170.00
	RPKWD-5950-100	Rounds - Peak - Weekday	450,023.00	0.00	0.00	0.00	450,023.00
	RPKWE-5950-100	Rounds - Peak - Weekend	5,071.00	0.00	0.00	0.00	5,071.00

	Accounts	Beginning Balance	Debit	Credit	Net Change	Ending Balance
Grand Totals:	**166**	**$0.00**	**$874,388.96**	**$874,388.96**	**$0.00**	**$0.00**

The Golf Club at Cypress Head
Course Cash Flow Report
For the Year Ended Monday, March 31, 2025

	Oct Actual	Nov Actual	Dec Actual	Jan Actual	Feb Actual	Mar Actual	Actual	Actual	Actual	Actual	Actual	Actual
EBITDA	(48,231)	16,897	7,782	36,002	83,828	111,753						
Management Fee Expense	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)						
Depreciation & Amortization	(96)	(96)	(96)	(96)	(96)	(96)						
Net Income	(55,116)	10,012	896	29,116	76,943	104,868	0	0	0	0	0	0
Working Capital Changes												
Inventory	(9,783)	7,245	4,673	(13,630)	(10,778)	(1,449)						
Receivables	(17,039)	18,162	(5,457)	5,605	(1,548)	(658)						
Prepaid Expenses	(16,920)	(18,423)	12,607	13,614	(1,417)	10,464						
Payables	18,515	8,449	4,713	14,760	4,037	9,791						
Due to from the City	(17,593)	0	498	0	(498)	544						
Accrued Expenses	7,532	17,766	(5,549)	(27,083)	3,342	10,032						
Deferred Revenues	36,316	(21,096)	(5,163)	(11,332)	(14,143)	(14,567)						
Depreciation & Amortization	96	96	96	96	96	96						
Operating Cash Flow	(53,994)	22,208	7,313	11,145	56,034	119,121	0	0	0	0	0	0
Investing Activities												
Financing Activites												
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	119,121	0	0	0	0	0	0
Beginning Cash	336,909	282,915	305,124	312,436	323,582	379,616						
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	119,121	0	0	0	0	0	0
Ending Cash	282,915	305,124	312,436	323,582	379,616	498,737	0	0	0	0	0	0

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

	3/31/2024	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025	3/31/2025
REVENUES													
Green Fees & Cart Fees	236,965.68	201,528.02	160,539.30	138,029.42	132,453.74	104,152.58	119,572.75	84,939.77	162,828.62	148,571.36	176,692.72	220,341.06	256,510.63
Merchandise	30,766.90	45,649.17	27,605.84	43,083.89	23,220.61	19,083.92	30,402.90	11,351.54	30,302.30	25,406.46	21,908.09	31,045.07	32,278.08
Other Pro Shop	6,024.39	3,778.17	2,763.17	2,109.98	2,034.39	1,774.39	1,475.00	1,242.45	2,683.00	1,960.00	1,516.00	6,047.56	6,690.00
Range	7,860.89	8,649.11	10,114.34	7,779.70	5,865.03	5,444.98	6,184.61	2,296.51	6,294.13	4,999.31	6,495.52	8,834.17	10,473.88
Other Operating Revenues	4,508.71	3,926.85	3,317.07	3,008.00	2,844.91	2,443.06	2,340.97	1,746.52	3,555.14	3,125.03	3,373.19	4,085.24	4,759.69
TOTAL REVENUE	286,126.57	263,531.32	204,339.72	194,010.99	166,418.68	132,898.93	159,976.23	101,576.79	205,663.19	184,062.16	209,985.52	270,353.10	310,712.28
COST OF SALES													
Merchandise	18,707.82	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76	22,582.10
TOTAL COGS	18,707.82	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76	22,582.10
PAYROLL													
Course and Grounds	38,907.54	41,749.05	44,539.06	40,260.93	47,477.30	43,491.45	45,854.54	49,171.10	47,569.72	47,302.12	49,942.73	45,419.67	46,470.48
Carts, Range, Starters, Etc.	18,497.18	19,834.24	18,376.10	16,665.60	12,785.16	12,762.52	12,533.41	11,201.65	15,165.97	15,101.81	17,089.85	16,397.73	20,099.57
Pro Shop	15,759.94	14,857.36	14,896.49	14,894.38	14,983.79	11,887.90	13,204.32	11,174.34	14,631.28	12,897.27	13,155.84	12,775.52	14,931.20
General and Administrative	16,612.13	17,416.48	18,692.70	17,254.52	17,950.28	18,018.61	23,998.53	18,349.71	23,543.09	13,589.38	18,795.31	17,191.39	18,915.34
Marketing	7,211.79	8,417.25	8,851.04	8,203.37	8,185.65	8,002.83	10,229.48	7,290.30	8,236.74	8,720.47	8,797.98	7,703.93	8,712.19
TOTAL PAYROLL	96,988.58	102,274.38	105,355.39	97,278.80	101,382.18	94,163.31	105,820.28	97,187.10	109,146.80	97,611.05	107,781.71	99,488.24	109,128.78
OPERATING EXPENSES													
Course and Grounds	31,433.74	31,255.02	44,865.79	20,776.66	28,438.50	31,391.29	19,591.18	15,230.30	23,835.93	14,845.31	17,323.90	20,072.62	23,700.20
Carts, Range, Starters, Etc.	11,360.92	9,330.33	8,190.84	7,821.09	11,775.57	8,367.17	7,669.52	715.08	738.69	5,463.29	1,135.40	825.83	1,287.50
Pro Shop	2,227.99	325.74	62.85	922.55	872.50	417.60	(52.60)	630.32	(543.75)	1,096.88	1,650.97	6,303.34	458.20
General and Administrative	29,024.74	31,006.61	28,027.94	33,434.87	26,357.30	28,109.87	30,589.93	27,593.44	30,674.23	38,163.82	33,897.51	34,585.54	37,014.04
Marketing	1,492.31	3,855.12	1,570.82	1,962.39	958.33	1,188.86	2,099.14	466.02	1,361.27	1,465.52	850.98	432.66	4,788.52
TOTAL OPERATING EXPENSES	75,539.70	75,772.82	82,718.24	64,917.56	68,402.20	69,474.79	59,897.17	44,635.16	56,066.37	61,034.82	54,858.76	62,219.99	67,248.46
TOTAL EXPENSES	191,236.10	208,504.82	210,991.36	197,740.02	179,175.67	177,125.68	189,677.42	149,807.70	188,766.33	176,280.47	173,983.88	186,524.99	198,959.34
EBITDA	94,890.47	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11	111,752.94

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

	3/31/2024	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025	3/31/2025
EBITDA	94,890.47	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11	111,752.94
MANAGEMENT FEES	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)
Interest Expense - Debt													
Interest Expense - Leases													
Interest Income													
TOTAL FINANCING ACTIVITY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OTHER INCOME (EXPENSE)													
Non-Operating Revenue													
Transfers from County													
Depreciation & Amortization	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
Incentive Compensation													
Partnership Income/(Loss)													
Gain/(Loss) On Disposal Of Assets													
Other Expenses / Capital Reserve													
Taxes													
TOTAL OTHER INCOME (EXPENSE)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
NET INCOME	88,202.94	48,338.97	(13,339.17)	(10,416.56)	(19,444.52)	(50,914.28)	(36,388.72)	(55,116.20)	10,011.57	896.40	29,116.35	76,942.82	104,867.65
Paid Rounds	5,059.00	4,469.00	3,726.00	3,320.00	3,124.00	2,583.00	2,639.00	1,856.00	3,473.00	3,089.00	3,355.00	4,177.00	4,978.00
Annual Pass Rounds	425.00	405.00	322.00	317.00	354.00	371.00	298.00	207.00	404.00	416.00	496.00	535.00	577.00
Other Rounds	318.00	290.00	253.00	237.00	285.00	245.00	238.00	179.00	239.00	256.00	242.00	316.00	294.00
Total Rounds	5,802.00	5,164.00	4,301.00	3,874.00	3,763.00	3,199.00	3,175.00	2,242.00	4,116.00	3,761.00	4,093.00	5,028.00	5,849.00
Revenue/Paid Rounds	56.56	58.97	54.84	58.44	53.27	51.45	60.62	54.73	59.22	59.59	62.59	64.72	62.42
Revenue/Total Rounds	49.32	51.03	47.51	50.08	44.23	41.54	50.39	45.31	49.97	48.94	51.30	53.77	53.12

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

	3/31/2025	9/30/2024	3/31/2024
ASSETS			
CURRENT ASSETS:			
Cash			
Cash - Depository	457,155	305,463	410,215
Cash - Payroll	40,232	30,096	33,324
Cash - Manual Checks	850	850	850
Cash - Housebank & Other	500	500	500
Total Cash	498,737	336,909	444,889
Accounts Receivable			
A/R Member	2,478	1,543	118
Total Accounts Recievable	2,478	1,543	118
Other Current Assets			
Inventory - Merchandise	128,768	105,046	140,395
Prepaid Insurance	29,280	48,286	26,869
Prepaid Exp - Other	30,479	11,397	30,507
Total Other Current Assets	188,526	164,729	197,771
TOTAL CURRENT ASSETS	689,741	503,180	642,779
PROPERTY, PLANT AND EQUIPMENT:			
Buildings & Improvements	30,598	30,598	30,598
Machinery & Equipment	5,550	5,550	5,550
Property Plant and Equipment	36,148	36,148	36,148
Accumulated Depreciation	(33,981)	(33,407)	(32,834)
TOTAL PROPERTY, PLANT AND EQUIPMENT	2,167	2,741	3,314
TOTAL ASSETS	691,908	505,921	646,092

The Golf Club at Cypress Head
For the Six Months Ending Monday, March 31, 2025

	3/31/2025	9/30/2024	3/31/2024
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accts Pay - Trade	104,517	44,253	142,667
Accts Pay - Other	185,905	202,954	209,887
Accrued Expenses	0	1,097	4,509
Accrued Payroll	47,357	49,798	36,857
Accrued Taxes	18,029	8,452	16,955
Deferred Revenue	169,379	199,364	159,990
TOTAL CURRENT LIBILITIES	525,187	505,918	570,864
TOTAL LIABILITIES	525,187	505,918	570,864
STOCKHOLDER'S EQUITY			
Retained Earnings	166,721	3	75,228
Net Retained Earnings	166,721	3	75,228
Stockholders Equity	166,721	3	75,228
TOTAL STOCKHOLDER'S EQUITY	166,721	3	75,228
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	691,908	505,921	646,092

The Golf Club at Cypress Head
Comparative Income Statement
For the Seven Months Ending Wednesday, April 30, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
REVENUES								
Green Fees & Cart Fees	201,528	1,201,316	1,856,064	65.%	230,338	1,280,222	1,963,221	65.%
Merchandise	45,649	196,948	340,345	58.%	33,477	185,768	312,000	60.%
Other Pro Shop	3,778	23,255	33,412	70.%	3,672	23,811	44,319	54.%
Range	8,649	40,847	76,236	54.%	9,207	48,601	80,609	60.%
Other Operating Revenues	3,927	23,849	37,803	63.%	4,478	25,123	38,951	64.%
TOTAL REVENUE	263,531	1,486,216	2,343,861	63.%	281,172	1,563,525	2,439,100	64.%
COST OF SALES								
Merchandise	30,458	134,169	239,469	56.%	23,259	131,174	213,650	61.%
TOTAL COGS	30,458	134,169	239,469	56.%	23,259	131,174	213,650	61.%
COGS - Merchandise %	67.%	68.%	70.%	97.%	69.%	71.%	68.%	104.%
PAYROLL								
Course and Grounds	41,749	282,103	503,726	56.%	47,631	333,507	561,966	59.%
Carts, Range, Starters, Etc.	19,834	112,745	185,868	61.%	21,872	116,928	221,847	53.%
Pro Shop	14,857	95,893	165,760	58.%	14,046	93,612	177,463	53.%
General and Administrative	17,416	126,917	222,831	57.%	18,446	128,830	216,683	59.%
Marketing	8,417	55,775	99,247	56.%	9,589	59,050	97,743	60.%
TOTAL PAYROLL	102,274	673,432	1,177,432	57.%	111,584	731,927	1,275,702	57.%
OPERATING EXPENSES								
Course and Grounds	31,255	196,881	341,945	58.%	27,910	142,918	374,055	38.%
Carts, Range, Starters, Etc.	9,330	63,202	107,026	59.%	2,344	12,509	105,917	12.%
Pro Shop	326	18,695	20,918	89.%	2,418	12,014	16,490	73.%
General and Administrative	31,007	216,802	363,322	60.%	48,833	250,762	336,073	75.%
Marketing	3,855	12,657	20,436	62.%	116	9,480	26,000	36.%
TOTAL OPERATING EXPENSES	75,773	508,237	853,647	60.%	81,621	427,685	858,535	50.%
TOTAL EXPENSES	208,505	1,315,838	2,270,548	58.%	216,463	1,290,786	2,347,887	55.%

The Golf Club at Cypress Head
Comparative Income Statement
For the Seven Months Ending Wednesday, April 30, 2025

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
OTHER INCOME (EXPENSE)								
MANAGEMENT FEES	(6,592)	(46,144)	(79,104)	58.%	(6,790)	(47,528)	(81,480)	58.%
Depreciation & Amortization	(96)	(669)	(1,146)	58.%	(96)	(669)	(1,146)	58.%
TOTAL OTHER INCOME (EXPENSE)	(6,688)	(46,813)	(80,250)	58.%	(6,885)	(48,197)	(82,626)	58.%
NET INCOME	48,339	123,565	(6,938)	(1781.%)	57,823	224,542	8,587	2615.%
Paid Rounds	4,469	26,152			4,711	25,639	41,475	62.%
Annual Pass Rounds	405	2,624			599	3,234	4,907	66.%
Other Rounds	290	1,843			287	1,813	2,739	66.%
Total Rounds	5,164	30,619			5,597	30,686	49,121	62.%
Revenue/Paid Rounds	59	57			60	61	59	104.%
Revenue/Total Rounds	51	49			50	51	50	103.%

The Golf Club at Cypress Head
Course Cash Flow Report
Wednesday, April 30, 2025

	April	YTD
EBITDA	$64,708.55	$272,738.88
Management Fee Expense	(6,789.76)	(47,528.32)
Depreciation & Amortization	(95.53)	(668.71)
Net Income	57,823.26	224,541.85
Working Capital Changes		
Inventory	1,258.03	(22,464.16)
Receivables	(2,859.85)	(3,794.89)
Payables	(7,333.98)	52,930.32
Due to from the City		(17,049.35)
Prepaids	11,445.18	11,369.44
Accrued Liabilities	6,397.88	12,436.88
Other Liabilities	(16,437.25)	(46,422.20)
Depreciation & Amortization	95.53	668.71
Operating Cash Flow	50,388.80	212,216.60
Investing Cash Flows		
Financing Cash Flow		
Net Cash Flows	50,388.80	212,216.60
Beginning Cash	498,736.66	336,908.86
Net Cash Flows	50,388.80	212,216.60
Ending Cash	549,125.46	549,125.46

The Golf Club at Cypress Head
Summary of All Units
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
146,189	140,331	104.%	131,052	112.%	Green Fees	804,325	873,886	92.%	770,316	104.%	1,259,601	1,208,978
84,149	73,967	114.%	70,476	119.%	Cart Fee	475,897	453,447	105.%	431,001	110.%	703,621	725,992
33,477	29,000	115.%	45,649	73.%	Merchandise	185,768	183,000	102.%	196,948	94.%	312,000	329,166
120	150	80.%	90	133.%	Handicap Fee	6,465	6,530	99.%	6,445	100.%	7,700	6,865
1,570	2,800	56.%	2,270	69.%	Lessons	8,491	10,800	79.%	9,955	85.%	26,850	12,716
1,982	970	204.%	1,418	140.%	Rental Clubs	8,855	6,669	133.%	6,855	129.%	9,769	14,386
9,207	8,824	104.%	8,649	106.%	Range	48,601	42,911	113.%	40,847	119.%	80,609	83,989
4,478	3,998	112.%	3,927	114.%	City Surcharge R & R	25,123	23,932	105.%	23,849	105.%	38,951	39,077
281,172	260,040	108.%	263,531	107.%	Total Revenues	1,563,525	1,601,174	98.%	1,486,216	105.%	2,439,100	2,421,169
					COST OF GOODS SOLD							
23,259	20,010	116.%	30,458	76.%	COGS - Merchandise	131,174	124,930	105.%	134,169	98.%	213,650	236,474
23,259	20,010	116.%	30,458	76.%	Total COGS	131,174	124,930	105.%	134,169	98.%	213,650	236,474
257,913	240,030	107.%	233,074	111.%	**GROSS MARGIN**	1,432,351	1,476,244	97.%	1,352,047	106.%	2,225,450	2,184,695
69.%	69.%	100.%	67.%	103.%	COGS - Merchandise %	71.%	68.%	104.%	68.%	104.%	68.%	843.%
					PAYROLL							
39,309	36,614	107.%	36,652	107.%	Gross Payroll - Salaried	264,637	256,300	103.%	256,004	103.%	439,372	458,452
56,163	52,976	106.%	50,441	111.%	Gross Payroll - Hourly	357,538	373,560	96.%	312,907	114.%	646,520	592,626
95,473	89,590	107.%	87,093	110.%	S/T Wages	622,175	629,860	99.%	568,911	109.%	1,085,892	1,051,078
7,093	6,854	103.%	6,462	110.%	Payroll Tax - FICA	46,386	48,184	96.%	43,395	107.%	83,071	77,659
179	258	69.%	255	70.%	Payroll Tax - UC	1,780	1,906	93.%	2,055	87.%	2,873	2,412
1,522	1,019	149.%	1,473	103.%	Payroll Tax - WC	10,381	6,919	150.%	10,851	96.%	12,105	18,630
7,318	7,528	97.%	6,992	105.%	Benefits	51,206	52,701	97.%	48,221	106.%	91,762	86,149
16,111	15,658	103.%	15,182	106.%	S/T Adders	109,752	109,711	100.%	104,522	105.%	189,810	184,850
111,584	105,248	106.%	102,274	109.%	TOTAL PAYROLL	731,927	739,571	99.%	673,432	109.%	1,275,702	1,235,927
					OPERATING EXPENSES							
65	0	0.%	0	0.%	Cart Supplies	275	400	69.%	403	68.%	450	360
1,810	800	226.%	530	342.%	Chemicals	7,604	5,600	136.%	4,692	162.%	9,600	10,411
357	600	60.%	257	139.%	Course Accessories	4,266	2,400	178.%	2,067	206.%	5,600	6,878
6,625	7,000	95.%	6,146	108.%	Fertilizer	44,974	40,100	112.%	35,632	126.%	60,100	53,539
0	0	0.%	0	0.%	Flowers/Decor	0	1,400	0.%	60	0.%	2,100	77
2,205	1,800	122.%	933	236.%	Fuel	10,355	10,500	99.%	9,206	112.%	21,100	19,851
0	0	0.%	0	0.%	Fungicides	4,684	4,600	102.%	4,714	99.%	6,600	6,537
1,503	1,000	150.%	4,679	32.%	Herbicides	11,760	16,900	70.%	20,558	57.%	35,900	26,822
415	0	0.%	1,311	32.%	Insecticides	(923)	1,200	(77.%)	6,890	(13.%)	12,800	822
1,581	500	316.%	1,315	120.%	Janitorial Supplies	4,073	2,300	177.%	3,382	120.%	3,600	5,494
0	0	0.%	0	0.%	Laundry/Uniforms	180	575	31.%	42	434.%	575	180
566	300	189.%	529	107.%	Office Supplies	3,797	3,100	122.%	3,344	114.%	4,450	6,517
0	1,000	0.%	45	0.%	Printing	1,348	2,900	46.%	1,643	82.%	3,100	2,213
0	0	0.%	0	0.%	Range Balls	3,625	3,250	112.%	3,250	112.%	6,500	7,250
0	0	0.%	1,382	0.%	Range Equipment	1,111	400	278.%	1,382	80.%	1,000	1,111
1,141	175	652.%	0	0.%	Range Expenses	1,239	1,375	90.%	1,182	105.%	2,175	1,875
0	1,500	0.%	0	0.%	Sand/Topdress	7,072	6,500	109.%	4,297	165.%	15,000	16,240
5,192	1,400	371.%	0	0.%	Seeds/Trees	8,186	6,400	128.%	3,520	233.%	7,900	10,086
0	600	0.%	0	0.%	Small Tools	664	1,200	55.%	40	1661.%	1,800	990
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
918	300	306.%	0	0.%	Supplies	2,822	2,360	120.%	5,287	53.%	3,240	3,225
0	0	0.%	281	0.%	Tournament Expense	372	2,650	14.%	4,630	8.%	3,050	857
142	150	95.%	142	100.%	Alarm System	1,406	1,150	122.%	1,144	123.%	1,900	2,430
408	200	204.%	60	680.%	Cart Repairs	1,366	250	546.%	107	1278.%	750	1,603
1,466	1,150	127.%	1,222	120.%	Computer Service	16,079	8,050	200.%	11,241	143.%	13,800	27,125
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	7,000	7,700	91.%	7,075	99.%	13,200	12,000
6,683	0	0.%	174	3845.%	Guest Relations	11,643	2,210	527.%	5,592	208.%	2,360	12,242
0	0	0.%	0	0.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
968	540	179.%	393	246.%	Irrigation	6,590	3,780	174.%	2,965	222.%	6,480	9,902
1,500	0	0.%	0	0.%	Lesson Expense	1,500	600	250.%	583	257.%	1,200	1,500
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
0	2,000	0.%	147	0.%	Repair & Maint - Paths	838	4,000	21.%	3,048	28.%	4,000	1,530
8,254	2,350	351.%	4,590	180.%	Repair & Maint - Equipment	23,179	17,050	136.%	16,217	143.%	29,900	40,430
1,347	400	337.%	61	2193.%	Repair & Maint - Building	8,539	2,800	305.%	7,426	115.%	4,800	11,696

The Golf Club at Cypress Head
Summary of All Units
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
0	7,141	0.%	7,141	0.%	Cart Lease	0	49,987	0.%	49,987	0.%	85,692	35,705
185	9,945	2.%	10,500	2.%	Equipment Lease	1,295	69,615	2.%	70,170	2.%	119,340	52,971
206	206	100.%	206	100.%	Off-Site Storage	1,236	1,442	86.%	1,442	86.%	2,472	2,266
946	950	100.%	1,004	94.%	Utilities - Electric	6,462	6,650	97.%	6,751	96.%	11,400	11,250
5,548	3,800	146.%	4,000	139.%	Utilities - Other	30,214	26,600	114.%	26,789	113.%	45,600	55,157
184	200	92.%	199	92.%	Utilities - Telephone/Fax	1,038	1,400	74.%	1,393	75.%	2,400	2,024
536	225	238.%	295	181.%	Utilities - Water	2,310	1,575	147.%	1,941	119.%	2,700	3,746
0	400	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,765	68.%	0	0.%	2,000	2,345
0	85	0.%	0	0.%	Adv/Promo - Promotional	342	575	60.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
0	0	0.%	0	0.%	Adv/Promo - Direct Mail	4,328	2,000	216.%	0	0.%	3,000	4,328
0	250	0.%	0	0.%	Adv/Promo - Special Events	0	500	0.%	0	0.%	500	0
116	500	23.%	3,855	3.%	Adv/Promo - Mktg/Bus Dev	2,105	3,500	60.%	12,657	17.%	6,000	3,914
0	1,300	0.%	0	0.%	Adv/Promo - Radio/TV	0	3,700	0.%	0	0.%	5,000	1,158
0	600	0.%	0	0.%	Adv/Promo - Website	1,500	4,600	33.%	0	0.%	8,000	4,250
457	450	102.%	385	119.%	Bank Charges	3,009	2,550	118.%	2,446	123.%	4,200	4,503
(27)	0	0.%	(74)	36.%	Cash Short/(Over)	(80)	0	0.%	(935)	9.%	0	(244)
240	330	73.%	240	100.%	Cell Phone	1,680	2,310	73.%	1,680	100.%	3,960	2,880
4,478	3,998	112.%	3,927	114.%	City Surcharge R & R	25,123	23,932	105.%	23,849	105.%	38,951	39,077
11,527	5,000	231.%	6,921	167.%	Credit Card Discounts	43,807	35,000	125.%	36,907	119.%	60,000	67,205
(515)	0	0.%	(50)	1030.%	Donations	(423)	0	0.%	(50)	846.%	0	(373)
175	0	0.%	0	0.%	Dues & Subscriptions	460	540	85.%	540	85.%	1,140	2,456
0	0	0.%	0	0.%	Education & Training	82	625	13.%	1,142	7.%	785	302
28	50	56.%	572	5.%	Employee Relations	6,218	6,000	104.%	8,085	77.%	6,550	7,938
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
9,985	10,200	98.%	9,213	108.%	Insurance Expense	69,894	71,400	98.%	64,494	108.%	122,400	118,178
2,617	0	0.%	0	0.%	Member Relations	3,288	200	1644.%	356	923.%	900	4,108
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
424	450	94.%	543	78.%	Payroll Processing Fee	3,240	3,400	95.%	3,561	91.%	5,650	5,829
42	100	42.%	105	40.%	Postage/Shipping	1,272	600	212.%	1,059	120.%	1,100	1,942
220	(30)	(733.%)	(30)	(733.%)	Tax/Licenses/Fees	740	(210)	(352.%)	(210)	(352.%)	(285)	780
106	50	212.%	1,622	7.%	Travel - Other	3,633	1,750	208.%	3,545	102.%	2,000	4,564
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
81,621	71,065	115.%	75,773	108.%	TOTAL OPERATING EXPENSES	427,685	505,206	85.%	508,237	84.%	858,535	773,095
64,709	63,717	102.%	55,027	118.%	EBITDA	272,739	231,467	118.%	170,378	160.%	91,213	175,673
6,790	6,790	100.%	6,592	103.%	Management Fee	47,528	47,530	100.%	46,144	103.%	81,480	80,488
6,790	6,790	100.%	6,592	103.%	Management Fees	47,528	47,530	100.%	46,144	103.%	81,480	80,488
23	23	100.%	23	100.%	Deprec - Mach & Equip	162	162	100.%	162	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	507	507	100.%	507	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	669	669	100.%	669	100.%	1,146	1,146
57,823	56,831	102.%	48,339	120.%	NET INCOME	224,542	183,268	123.%	123,565	182.%	8,587	94,039

The Golf Club at Cypress Head
Course Grounds
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
146,189	140,331	104.%	131,052	112.%	Green Fees	804,325	873,886	92.%	770,316	104.%	1,259,601	1,208,978
4,478	3,998	112.%	3,927	114.%	City Surcharge R & R	25,123	23,932	105.%	23,849	105.%	38,951	39,077
150,666	144,329	104.%	134,979	112.%	Total Revenues	829,448	897,818	92.%	794,165	104.%	1,298,552	1,248,054
150,666	144,329	104.%	134,979	112.%	GROSS MARGIN	829,448	897,818	92.%	794,165	104.%	1,298,552	1,248,054
					PAYROLL							
11,776	11,720	100.%	11,253	105.%	Gross Payroll - Salaried	82,710	82,038	101.%	80,152	103.%	140,637	141,173
29,282	27,844	105.%	24,517	119.%	Gross Payroll - Hourly	204,166	196,425	104.%	160,234	127.%	338,431	336,019
41,058	39,564	104.%	35,770	115.%	S/T Wages	286,876	278,463	103.%	240,387	119.%	479,068	477,192
3,057	3,027	101.%	2,655	115.%	Payroll Tax - FICA	21,314	21,302	100.%	17,810	120.%	36,649	35,373
32	54	60.%	56	57.%	Payroll Tax - UC	779	769	101.%	723	108.%	862	887
632	450	141.%	560	113.%	Payroll Tax - WC	4,741	3,059	155.%	4,406	108.%	5,340	8,106
2,852	3,285	87.%	2,708	105.%	Benefits	19,797	22,997	86.%	18,778	105.%	40,047	33,571
6,573	6,815	96.%	5,979	110.%	S/T Adders	46,631	48,128	97.%	41,716	112.%	82,898	77,938
47,631	46,379	103.%	41,749	114.%	TOTAL PAYROLL	333,507	326,592	102.%	282,103	118.%	561,966	555,130
					OPERATING EXPENSES							
1,810	800	226.%	530	342.%	Chemicals	7,604	5,600	136.%	4,692	162.%	9,600	10,411
357	600	60.%	257	139.%	Course Accessories	4,266	2,400	178.%	2,067	206.%	5,600	6,878
6,625	7,000	95.%	6,146	108.%	Fertilizer	44,974	40,100	112.%	35,632	126.%	60,100	53,539
0	0	0.%	0	0.%	Flowers/Decor	0	1,400	0.%	60	0.%	2,100	77
2,205	1,800	122.%	933	236.%	Fuel	10,355	10,500	99.%	9,206	112.%	21,100	19,851
0	0	0.%	0	0.%	Fungicides	4,684	4,600	102.%	4,714	99.%	6,600	6,537
1,503	1,000	150.%	4,679	32.%	Herbicides	11,760	16,900	70.%	20,558	57.%	35,900	26,822
415	0	0.%	1,311	32.%	Insecticides	(923)	1,200	(77.%)	6,890	(13.%)	12,800	822
0	1,500	0.%	0	0.%	Sand/Topdress	7,072	6,500	109.%	4,297	165.%	15,000	16,240
5,192	1,400	371.%	0	0.%	Seeds/Trees	8,186	6,400	128.%	3,520	233.%	7,900	10,086
0	600	0.%	0	0.%	Small Tools	664	1,200	55.%	40	1661.%	1,800	990
0	0	0.%	0	0.%	Staff/Volunteer Uniforms	0	0	0.%	0	0.%	0	314
968	540	179.%	393	246.%	Irrigation	6,590	3,780	174.%	2,965	222.%	6,480	9,902
0	2,000	0.%	147	0.%	Repair & Maint - Paths	838	4,000	21.%	3,048	28.%	4,000	1,530
4,267	2,300	186.%	4,099	104.%	Repair & Maint - Equipment	14,321	16,100	89.%	11,353	126.%	27,600	28,207
82	200	41.%	0	0.%	Repair & Maint - Building	2,017	1,400	144.%	1,380	146.%	2,400	2,017
185	9,945	2.%	10,500	2.%	Equipment Lease	1,295	69,615	2.%	70,170	2.%	119,340	52,971
216	300	72.%	257	84.%	Utilities - Electric	1,693	2,100	81.%	1,854	91.%	3,600	3,200
3,300	1,800	183.%	1,707	193.%	Utilities - Other	13,496	12,600	107.%	11,328	119.%	21,600	25,580
536	225	238.%	295	181.%	Utilities - Water	2,310	1,575	147.%	1,941	119.%	2,700	3,746
0	0	0.%	0	0.%	Education & Training	82	625	13.%	540	15.%	785	82
0	0	0.%	0	0.%	Employee Relations	835	550	152.%	536	156.%	850	1,050
0	0	0.%	0	0.%	Employee Testing	86	100	86.%	89	96.%	200	222
0	0	0.%	0	0.%	O/S - Other	0	0	0.%	0	0.%	6,000	6,000
250	0	0.%	0	0.%	Tax/Licenses/Fees	715	0	0.%	0	0.%	0	905
27,910	32,010	87.%	31,255	89.%	TOTAL OPERATING EXPENSES	142,918	209,245	68.%	196,881	73.%	374,055	287,982
75,125	65,939	114.%	61,975	121.%	EBITDA	353,022	361,981	98.%	315,181	112.%	362,531	404,942
75,125	65,939	114.%	61,975	121.%	NET INCOME	353,022	361,981	98.%	315,181	112.%	362,531	404,942

The Golf Club at Cypress Head
Carts
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
84,149	73,967	114.%	70,476	119.%	Cart Fee	475,897	453,447	105.%	431,001	110.%	703,621	725,992
84,149	73,967	114.%	70,476	119.%	Total Revenues	475,897	453,447	105.%	431,001	110.%	703,621	725,992
84,149	73,967	114.%	70,476	119.%	GROSS MARGIN	475,897	453,447	105.%	431,001	110.%	703,621	725,992
					PAYROLL							
19,858	16,491	120.%	17,937	111.%	Gross Payroll - Hourly	106,178	116,079	91.%	102,021	104.%	202,577	172,149
19,858	16,491	120.%	17,937	111.%	S/T Wages	106,178	116,079	91.%	102,021	104.%	202,577	172,149
1,529	1,262	121.%	1,399	109.%	Payroll Tax - FICA	8,235	8,880	93.%	7,983	103.%	15,497	13,463
138	145	95.%	150	92.%	Payroll Tax - UC	613	580	106.%	757	81.%	1,191	1,088
321	188	171.%	318	101.%	Payroll Tax - WC	1,725	1,275	135.%	1,874	92.%	2,259	3,036
25	26	96.%	31	81.%	Benefits	177	187	95.%	111	160.%	322	315
2,013	1,621	124.%	1,897	106.%	S/T Adders	10,751	10,923	98.%	10,725	100.%	19,269	17,902
21,872	18,112	121.%	19,834	110.%	TOTAL PAYROLL	116,928	127,002	92.%	112,745	104.%	221,847	190,051
					OPERATING EXPENSES							
65	0	0.%	0	0.%	Cart Supplies	275	400	69.%	403	68.%	450	360
0	0	0.%	0	0.%	Supplies	102	450	23.%	462	22.%	950	335
408	200	204.%	60	680.%	Cart Repairs	1,366	250	546.%	107	1278.%	750	1,603
0	7,141	0.%	7,141	0.%	Cart Lease	0	49,987	0.%	49,987	0.%	85,692	35,705
730	650	112.%	747	98.%	Utilities - Electric	4,769	4,550	105.%	4,897	97.%	7,800	8,050
1,203	7,991	15.%	7,948	15.%	TOTAL OPERATING EXPENSES	6,511	55,637	12.%	55,856	12.%	95,642	46,053
61,075	47,864	128.%	42,694	143.%	EBITDA	352,457	270,808	130.%	262,400	134.%	386,132	489,888
61,075	47,864	128.%	42,694	143.%	NET INCOME	352,457	270,808	130.%	262,400	134.%	386,132	489,888

The Golf Club at Cypress Head
Range
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
9,207	8,824	104.%	8,649	106.%	Range	48,601	42,911	113.%	40,847	119.%	80,609	83,989
9,207	8,824	104.%	8,649	106.%	Total Revenues	48,601	42,911	113.%	40,847	119.%	80,609	83,989
9,207	8,824	104.%	8,649	106.%	GROSS MARGIN	48,601	42,911	113.%	40,847	119.%	80,609	83,989
					OPERATING EXPENSES							
0	0	0.%	0	0.%	Range Balls	3,625	3,250	112.%	3,250	112.%	6,500	7,250
0	0	0.%	1,382	0.%	Range Equipment	1,111	400	278.%	1,382	80.%	1,000	1,111
1,141	175	652.%	0	0.%	Range Expenses	1,239	1,375	90.%	1,182	105.%	2,175	1,875
0	50	0.%	0	0.%	Repair & Maint - Equipment	23	350	7.%	1,532	2.%	600	44
1,141	225	507.%	1,382	83.%	TOTAL OPERATING EXPENSES	5,998	5,375	112.%	7,347	82.%	10,275	10,280
8,066	8,599	94.%	7,267	111.%	EBITDA	42,602	37,536	113.%	33,501	127.%	70,334	73,709
8,066	8,599	94.%	7,267	111.%	NET INCOME	42,602	37,536	113.%	33,501	127.%	70,334	73,709

The Golf Club at Cypress Head
Golf Shop
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
33,477	29,000	115.%	45,649	73.%	Merchandise	185,768	183,000	102.%	196,948	94.%	312,000	329,166
120	150	80.%	90	133.%	Handicap Fee	6,465	6,530	99.%	6,445	100.%	7,700	6,865
1,570	2,800	56.%	2,270	69.%	Lessons	8,491	10,800	79.%	9,955	85.%	26,850	12,716
1,982	970	204.%	1,418	140.%	Rental Clubs	8,855	6,669	133.%	6,855	129.%	9,769	14,386
37,149	32,920	113.%	49,427	75.%	Total Revenues	209,579	206,999	101.%	220,203	95.%	356,319	363,133
					COST OF GOODS SOLD							
23,259	20,010	116.%	30,458	76.%	COGS - Merchandise	131,174	124,930	105.%	134,169	98.%	213,650	236,474
23,259	20,010	116.%	30,458	76.%	Total COGS	131,174	124,930	105.%	134,169	98.%	213,650	236,474
13,890	12,910	108.%	18,970	73.%	GROSS MARGIN	78,405	82,069	96.%	86,034	91.%	142,669	126,659
69.%	69.%	100.%	67.%	103.%	COGS - Merchandise %	71.%	68.%	104.%	68.%	104.%	68.%	843.%
					PAYROLL							
4,683	3,713	126.%	4,529	103.%	Gross Payroll - Salaried	30,559	25,992	118.%	30,020	102.%	44,558	51,338
6,899	8,473	81.%	7,835	88.%	Gross Payroll - Hourly	46,300	59,875	77.%	49,658	93.%	103,479	83,076
11,583	12,186	95.%	12,364	94.%	S/T Wages	76,860	85,867	90.%	79,678	96.%	148,036	134,414
867	932	93.%	913	95.%	Payroll Tax - FICA	5,668	6,569	86.%	5,841	97.%	11,325	10,106
33	50	66.%	49	67.%	Payroll Tax - UC	245	329	74.%	345	71.%	554	408
193	139	139.%	221	87.%	Payroll Tax - WC	1,272	943	135.%	1,488	85.%	1,650	2,896
1,371	1,304	105.%	1,311	105.%	Benefits	9,567	9,130	105.%	8,541	112.%	15,898	15,654
2,464	2,424	102.%	2,493	99.%	S/T Adders	16,752	16,971	99.%	16,215	103.%	29,427	29,065
14,046	14,610	96.%	14,857	95.%	TOTAL PAYROLL	93,612	102,838	91.%	95,893	98.%	177,463	163,479
					OPERATING EXPENSES							
0	1,000	0.%	45	0.%	Printing	1,300	2,900	45.%	1,643	79.%	3,100	2,165
918	300	306.%	0	0.%	Supplies	2,721	1,910	142.%	4,825	56.%	2,290	2,890
0	0	0.%	281	0.%	Tournament Expense	372	2,650	14.%	4,630	8.%	3,050	857
0	0	0.%	0	0.%	Handicap Expense	6,122	6,400	96.%	6,412	95.%	6,850	6,825
1,500	0	0.%	0	0.%	Lesson Expense	1,500	600	250.%	583	257.%	1,200	1,500
0	0	0.%	0	0.%	Education & Training	0	0	0.%	602	0.%	0	0
2,418	1,300	186.%	326	742.%	TOTAL OPERATING EXPENSES	12,014	14,460	83.%	18,695	64.%	16,490	14,237
(2,574)	(3,000)	86.%	3,787	(68.%)	EBITDA	(27,220)	(35,229)	77.%	(28,554)	95.%	(51,284)	(51,056)
(2,574)	(3,000)	86.%	3,787	(68.%)	NET INCOME	(27,220)	(35,229)	77.%	(28,554)	95.%	(51,284)	(51,056)

The Golf Club at Cypress Head
G A
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
14,647	14,273	103.%	13,723	107.%	Gross Payroll - Salaried	101,376	99,912	101.%	98,243	103.%	171,277	178,812
124	167	74.%	152	81.%	Gross Payroll - Hourly	894	1,181	76.%	993	90.%	2,034	1,382
14,770	14,440	102.%	13,875	106.%	S/T Wages	102,269	101,093	101.%	99,237	103.%	173,311	180,195
1,031	1,105	93.%	968	107.%	Payroll Tax - FICA	7,485	7,734	97.%	8,241	91.%	13,258	12,444
(24)	1	(1633.%)	1	(2449.%)	Payroll Tax - UC	89	134	67.%	129	69.%	141	(26)
240	164	146.%	246	98.%	Payroll Tax - WC	1,798	1,110	162.%	2,191	82.%	1,932	3,111
2,428	2,301	105.%	2,327	104.%	Benefits	17,189	16,110	107.%	17,119	100.%	28,042	29,021
3,675	3,572	103.%	3,541	104.%	S/T Adders	26,561	25,088	106.%	27,680	96.%	43,373	44,550
18,446	18,012	102.%	17,416	106.%	TOTAL PAYROLL	128,830	126,180	102.%	126,917	102.%	216,683	224,745
					OPERATING EXPENSES							
1,581	500	316.%	1,315	120.%	Janitorial Supplies	4,073	2,300	177.%	3,382	120.%	3,600	5,494
0	0	0.%	0	0.%	Laundry/Uniforms	180	575	31.%	42	434.%	575	180
566	300	189.%	529	107.%	Office Supplies	3,797	3,100	122.%	3,344	114.%	4,450	6,517
0	0	0.%	0	0.%	Printing	48	0	0.%	0	0.%	0	48
142	150	95.%	142	100.%	Alarm System	1,406	1,150	122.%	1,144	123.%	1,900	2,430
1,466	1,150	127.%	1,222	120.%	Computer Service	16,079	8,050	200.%	11,241	143.%	13,800	27,125
1,000	1,100	91.%	1,000	100.%	Contract Cleaning	7,000	7,700	91.%	7,075	99.%	13,200	12,000
6,683	0	0.%	174	3845.%	Guest Relations	11,643	2,210	527.%	5,592	208.%	2,360	12,242
0	0	0.%	0	0.%	Pest Control	0	0	0.%	18	0.%	0	0
3,987	0	0.%	491	813.%	Repair & Maint - Equipment	8,835	600	1472.%	3,332	265.%	1,700	12,178
1,265	200	632.%	61	2060.%	Repair & Maint - Building	6,522	1,400	466.%	6,046	108.%	2,400	9,679
206	206	100.%	206	100.%	Off-Site Storage	1,236	1,442	86.%	1,442	86.%	2,472	2,266
2,248	2,000	112.%	2,293	98.%	Utilities - Other	16,719	14,000	119.%	15,460	108.%	24,000	29,577
184	200	92.%	199	92.%	Utilities - Telephone/Fax	1,038	1,400	74.%	1,393	75.%	2,400	2,024
457	450	102.%	385	119.%	Bank Charges	3,009	2,550	118.%	2,446	123.%	4,200	4,503
(27)	0	0.%	(74)	36.%	Cash Short/(Over)	(80)	0	0.%	(935)	9.%	0	(244)
240	330	73.%	240	100.%	Cell Phone	1,680	2,310	73.%	1,680	100.%	3,960	2,880
4,478	3,998	112.%	3,927	114.%	City Surcharge R & R	25,123	23,932	105.%	23,849	105.%	38,951	39,077
11,527	5,000	231.%	6,921	167.%	Credit Card Discounts	43,807	35,000	125.%	36,907	119.%	60,000	67,205
(515)	0	0.%	(50)	1030.%	Donations	(423)	0	0.%	(50)	846.%	0	(373)
175	0	0.%	0	0.%	Dues & Subscriptions	460	540	85.%	540	85.%	1,140	2,456
0	0	0.%	0	0.%	Education & Training	0	0	0.%	0	0.%	0	220
28	50	56.%	572	5.%	Employee Relations	5,383	5,450	99.%	7,550	71.%	5,700	6,888
9,985	10,200	98.%	9,213	108.%	Insurance Expense	69,894	71,400	98.%	64,494	108.%	122,400	118,178
2,617	0	0.%	0	0.%	Member Relations	3,288	200	1644.%	356	923.%	900	4,108
0	0	0.%	0	0.%	O/S - Accounting	11,875	12,500	95.%	12,500	95.%	17,500	18,375
424	450	94.%	543	78.%	Payroll Processing Fee	3,240	3,400	95.%	3,561	91.%	5,650	5,829
42	100	42.%	105	40.%	Postage/Shipping	1,272	600	212.%	1,059	120.%	1,100	1,942
(30)	(30)	100.%	(30)	100.%	Tax/Licenses/Fees	25	(210)	(12.%)	(210)	(12.%)	(285)	(125)
106	50	212.%	1,622	7.%	Travel - Other	3,633	1,750	208.%	3,545	102.%	2,000	4,564
0	0	0.%	0	0.%	Employee Meals	0	0	0.%	0	0.%	0	37
48,833	26,404	185.%	31,007	157.%	TOTAL OPERATING EXPENSES	250,762	203,349	123.%	216,802	116.%	336,073	397,282
(67,279)	(44,416)	151.%	(48,423)	139.%	EBITDA	(379,592)	(329,529)	115.%	(343,719)	110.%	(552,756)	(622,027)
6,790	6,790	100.%	6,592	103.%	Management Fee	47,528	47,530	100.%	46,144	103.%	81,480	80,488
6,790	6,790	100.%	6,592	103.%	Management Fees	47,528	47,530	100.%	46,144	103.%	81,480	80,488
23	23	100.%	23	100.%	Deprec - Mach & Equip	162	162	100.%	162	100.%	277	277
72	72	100.%	72	100.%	Deprec - Buildings	507	507	100.%	507	100.%	869	869
96	96	100.%	96	100.%	S/T DEPR. & AMORT	669	669	100.%	669	100.%	1,146	1,146
(74,165)	(51,302)	145.%	(55,111)	135.%	NET INCOME	(427,789)	(377,728)	113.%	(390,531)	110.%	(635,383)	(703,661)

The Golf Club at Cypress Head
Marketing
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
8,203	6,908	119.%	7,146	115.%	Gross Payroll - Salaried	49,992	48,358	103.%	47,589	105.%	82,900	87,128
8,203	6,908	119.%	7,146	115.%	S/T Wages	49,992	48,358	103.%	47,589	105.%	82,900	87,128
609	528	115.%	528	115.%	Payroll Tax - FICA	3,684	3,699	100.%	3,520	105.%	6,342	6,272
0	8	0.%	0	0.%	Payroll Tax - UC	54	93	58.%	102	53.%	123	54
135	79	172.%	129	105.%	Payroll Tax - WC	845	531	159.%	892	95.%	924	1,481
642	611	105.%	615	104.%	Benefits	4,476	4,277	105.%	3,672	122.%	7,454	7,588
1,385	1,226	113.%	1,272	109.%	S/T Adders	9,058	8,601	105.%	8,186	111.%	14,843	15,395
9,589	8,134	118.%	8,417	114.%	TOTAL PAYROLL	59,050	56,959	104.%	55,775	106.%	97,743	102,523
					OPERATING EXPENSES							
0	400	0.%	0	0.%	Adv/Promo - Organizations	1,205	1,765	68.%	0	0.%	2,000	2,345
0	85	0.%	0	0.%	Adv/Promo - Promotional	342	575	60.%	0	0.%	1,000	565
0	0	0.%	0	0.%	Adv/Promo - Local/Regional Print	0	500	0.%	0	0.%	500	701
0	0	0.%	0	0.%	Adv/Promo - Direct Mail	4,328	2,000	216.%	0	0.%	3,000	4,328
0	250	0.%	0	0.%	Adv/Promo - Special Events	0	500	0.%	0	0.%	500	0
116	500	23.%	3,855	3.%	Adv/Promo - Mktg/Bus Dev	2,105	3,500	60.%	12,657	17.%	6,000	3,914
0	1,300	0.%	0	0.%	Adv/Promo - Radio/TV	0	3,700	0.%	0	0.%	5,000	1,158
0	600	0.%	0	0.%	Adv/Promo - Website	1,500	4,600	33.%	0	0.%	8,000	4,250
116	3,135	4.%	3,855	3.%	TOTAL OPERATING EXPENSES	9,480	17,140	55.%	12,657	75.%	26,000	17,260
(9,704)	(11,269)	86.%	(12,272)	79.%	EBITDA	(68,531)	(74,099)	92.%	(68,431)	100.%	(123,743)	(119,783)
(9,704)	(11,269)	86.%	(12,272)	79.%	NET INCOME	(68,531)	(74,099)	92.%	(68,431)	100.%	(123,743)	(119,783)

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					REVENUES							
230,338	214,298	107.%	201,528	114.%	Green Fees & Cart Fees	1,280,222	1,327,332	96.%	1,201,316	107.%	1,963,221	1,934,970
33,477	29,000	115.%	45,649	73.%	Merchandise	185,768	183,000	102.%	196,948	94.%	312,000	329,166
3,672	3,920	94.%	3,778	97.%	Other Pro Shop	23,811	23,999	99.%	23,255	102.%	44,319	33,968
9,207	8,824	104.%	8,649	106.%	Range	48,601	42,911	113.%	40,847	119.%	80,609	83,989
4,478	3,998	112.%	3,927	114.%	Other Operating Revenues	25,123	23,932	105.%	23,849	105.%	38,951	39,077
281,172	260,040	108.%	263,531	107.%	TOTAL REVENUE	1,563,525	1,601,174	98.%	1,486,216	105.%	2,439,100	2,421,169
					COST OF SALES							
23,259	20,010	116.%	30,458	76.%	Merchandise	131,174	124,930	105.%	134,169	98.%	213,650	236,474
23,259	20,010	116.%	30,458	76.%	TOTAL COGS	131,174	124,930	105.%	134,169	98.%	213,650	236,474
					PAYROLL							
47,631	46,379	103.%	41,749	114.%	Course and Grounds	333,507	326,592	102.%	282,103	118.%	561,966	555,130
21,872	18,112	121.%	19,834	110.%	Carts, Range, Starters, Etc.	116,928	127,002	92.%	112,745	104.%	221,847	190,051
14,046	14,610	96.%	14,857	95.%	Pro Shop	93,612	102,838	91.%	95,893	98.%	177,463	163,479
18,446	18,012	102.%	17,416	106.%	General and Administrative	128,830	126,180	102.%	126,917	102.%	216,683	224,745
9,589	8,134	118.%	8,417	114.%	Marketing	59,050	56,959	104.%	55,775	106.%	97,743	102,523
111,584	105,248	106.%	102,274	109.%	TOTAL PAYROLL	731,927	739,571	99.%	673,432	109.%	1,275,702	1,235,927
					OPERATING EXPENSES							
27,910	32,010	87.%	31,255	89.%	Course and Grounds	142,918	209,245	68.%	196,881	73.%	374,055	287,982
2,344	8,216	29.%	9,330	25.%	Carts, Range, Starters, Etc.	12,509	61,012	21.%	63,202	20.%	105,917	56,334
2,418	1,300	186.%	326	742.%	Pro Shop	12,014	14,460	83.%	18,695	64.%	16,490	14,237
48,833	26,404	185.%	31,007	157.%	General and Administrative	250,762	203,349	123.%	216,802	116.%	336,073	397,282
116	3,135	4.%	3,855	3.%	Marketing	9,480	17,140	55.%	12,657	75.%	26,000	17,260
81,621	71,065	115.%	75,773	108.%	TOTAL OPERATING EXPENSES	427,685	505,206	85.%	508,237	84.%	858,535	773,095
216,463	196,323	110.%	208,505	104.%	TOTAL EXPENSES	1,290,786	1,369,707	94.%	1,315,838	98.%	2,347,887	2,245,496
64,709	63,717	102.%	55,027	118.%	EBITDA	272,739	231,467	118.%	170,378	160.%	91,213	175,673

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
64,709	63,717	102.%	55,027	118.%	EBITDA	272,739	231,467	118.%	170,378	160.%	91,213	175,673
(6,790)	(6,790)	100.%	(6,592)	103.%	MANAGEMENT FEES	(47,528)	(47,530)	100.%	(46,144)	103.%	(81,480)	(80,488)
					OTHER INCOME (EXPENSE)							
(96)	(96)	100.%	(96)	100.%	Depreciation & Amortization	(669)	(669)	100.%	(669)	100.%	(1,146)	(1,146)
(96)	(96)	100.%	(96)	100.%	TOTAL OTHER INCOME (EXPENSE)	(669)	(669)	100.%	(669)	100.%	(1,146)	(1,146)
57,823	56,831	102.%	48,339	120.%	NET INCOME	224,542	183,268	123.%	123,565	182.%	8,587	94,039
4,711	4,665	101.%	4,469	105.%	Paid Rounds	25,639	27,207	94.%	26,152	98.%	41,615	41,031
599	429	140.%	405	148.%	Annual Pass Rounds	3,234	2,679	121.%	2,624	123.%	4,907	4,896
287	231	124.%	290	99.%	Other Rounds	1,813	1,784	102.%	1,843	98.%	2,739	3,071
5,597	5,325	105.%	5,164	108.%	Total Rounds	30,686	31,670	97.%	30,619	100.%	49,261	48,998
60	56	107.%	59	101.%	Revenue/Paid Rounds	61	59	104.%	57	107.%	59	702
50	49	103.%	51	98.%	Revenue/Total Rounds	51	51	101.%	49	105.%	50	586

The Golf Club at Cypress Head
Course Cash Flow Report
For the Year Ended Wednesday, April 30, 2025

	Oct Actual	Nov Actual	Dec Actual	Jan Actual	Feb Actual	Mar Actual	Apr Actual	Actual	Actual	Actual	Actual	Actual
EBITDA	(48,231)	16,897	7,782	36,002	83,828	111,753	64,709					
Management Fee Expense	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)	(6,790)					
Depreciation & Amortization	(96)	(96)	(96)	(96)	(96)	(96)	(96)					
Net Income	(55,116)	10,012	896	29,116	76,943	104,868	57,823	0	0	0	0	0
Working Capital Changes												
Inventory	(9,783)	7,245	4,673	(13,630)	(10,778)	(1,449)	1,258					
Receivables	(17,039)	18,162	(5,457)	5,605	(1,548)	(658)	(2,860)					
Prepaid Expenses	(16,920)	(18,423)	12,607	13,614	(1,417)	10,464	11,445					
Payables	18,515	8,449	4,713	14,760	4,037	9,791	(7,334)					
Due to from the City	(17,593)	0	498	0	(498)	544	0					
Accrued Expenses	7,532	17,766	(5,549)	(27,083)	3,342	10,032	6,398					
Deferred Revenues	36,316	(21,096)	(5,163)	(11,332)	(14,143)	(14,567)	(16,437)					
Depreciation & Amortization	96	96	96	96	96	96	96					
Operating Cash Flow	(53,994)	22,208	7,313	11,145	56,034	119,121	50,389	0	0	0	0	0
Investing Activities												
Financing Activites												
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	119,121	50,389	0	0	0	0	0
Beginning Cash	336,909	282,915	305,124	312,436	323,582	379,616	498,737					
Net Cash Flows	(53,994)	22,208	7,313	11,145	56,034	119,121	50,389	0	0	0	0	0
Ending Cash	282,915	305,124	312,436	323,582	379,616	498,737	549,125	0	0	0	0	0

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025	3/31/2025	4/30/2025
REVENUES													
Green Fees & Cart Fees	201,528.02	160,539.30	138,029.42	132,453.74	104,152.58	119,572.75	84,939.77	162,828.62	148,571.36	176,692.72	220,341.06	256,510.63	230,337.80
Merchandise	45,649.17	27,605.84	43,083.89	23,220.61	19,083.92	30,402.90	11,351.54	30,302.30	25,406.46	21,908.09	31,045.07	32,278.08	33,476.81
Other Pro Shop	3,778.17	2,763.17	2,109.98	2,034.39	1,774.39	1,475.00	1,242.45	2,683.00	1,960.00	1,516.00	6,047.56	6,690.00	3,672.00
Range	8,649.11	10,114.34	7,779.70	5,865.03	5,444.98	6,184.61	2,296.51	6,294.13	4,999.31	6,495.52	8,834.17	10,473.88	9,207.25
Other Operating Revenues	3,926.85	3,317.07	3,008.00	2,844.91	2,443.06	2,340.97	1,746.52	3,555.14	3,125.03	3,373.19	4,085.24	4,759.69	4,477.69
TOTAL REVENUE	263,531.32	204,339.72	194,010.99	166,418.68	132,898.93	159,976.23	101,576.79	205,663.19	184,062.16	209,985.52	270,353.10	310,712.28	281,171.55
COST OF SALES													
Merchandise	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76	22,582.10	23,258.51
TOTAL COGS	30,457.62	22,917.73	35,543.66	9,391.29	13,487.58	23,959.97	7,985.44	23,553.16	17,634.60	11,343.41	24,816.76	22,582.10	23,258.51
PAYROLL													
Course and Grounds	41,749.05	44,539.06	40,260.93	47,477.30	43,491.45	45,854.54	49,171.10	47,569.72	47,302.12	49,942.73	45,419.67	46,470.48	47,631.17
Carts, Range, Starters, Etc.	19,834.24	18,376.10	16,665.60	12,785.16	12,762.52	12,533.41	11,201.65	15,165.97	15,101.81	17,089.85	16,397.73	20,099.57	21,871.63
Pro Shop	14,857.36	14,896.49	14,894.38	14,983.79	11,887.90	13,204.32	11,174.34	14,631.28	12,897.27	13,155.84	12,775.52	14,931.20	14,046.21
General and Administrative	17,416.48	18,692.70	17,254.52	17,950.28	18,018.61	23,998.53	18,349.71	23,543.09	13,589.38	18,795.31	17,191.39	18,915.34	18,445.78
Marketing	8,417.25	8,851.04	8,203.37	8,185.65	8,002.83	10,229.48	7,290.30	8,236.74	8,720.47	8,797.98	7,703.93	8,712.19	9,588.72
TOTAL PAYROLL	102,274.38	105,355.39	97,278.80	101,382.18	94,163.31	105,820.28	97,187.10	109,146.80	97,611.05	107,781.71	99,488.24	109,128.78	111,583.51
OPERATING EXPENSES													
Course and Grounds	31,255.02	44,865.79	20,776.66	28,438.50	31,391.29	19,591.18	15,230.30	23,835.93	14,845.31	17,323.90	20,072.62	23,700.20	27,910.16
Carts, Range, Starters, Etc.	9,330.33	8,190.84	7,821.09	11,775.57	8,367.17	7,669.52	715.08	738.69	5,463.29	1,135.40	825.83	1,287.50	2,343.60
Pro Shop	325.74	62.85	922.55	872.50	417.60	(52.60)	630.32	(543.75)	1,096.88	1,650.97	6,303.34	458.20	2,418.25
General and Administrative	31,006.61	28,027.94	33,434.87	26,357.30	28,109.87	30,589.93	27,593.44	30,674.23	38,163.82	33,897.51	34,585.54	37,014.04	48,833.45
Marketing	3,855.12	1,570.82	1,962.39	958.33	1,188.86	2,099.14	466.02	1,361.27	1,465.52	850.98	432.66	4,788.52	115.52
TOTAL OPERATING EXPENSES	75,772.82	82,718.24	64,917.56	68,402.20	69,474.79	59,897.17	44,635.16	56,066.37	61,034.82	54,858.76	62,219.99	67,248.46	81,620.98
TOTAL EXPENSES	208,504.82	210,991.36	197,740.02	179,175.67	177,125.68	189,677.42	149,807.70	188,766.33	176,280.47	173,983.88	186,524.99	198,959.34	216,463.00
EBITDA	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11	111,752.94	64,708.55

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024	12/31/2024	1/31/2025	2/28/2025	3/31/2025	4/30/2025
EBITDA	55,026.50	(6,651.64)	(3,729.03)	(12,756.99)	(44,226.75)	(29,701.19)	(48,230.91)	16,896.86	7,781.69	36,001.64	83,828.11	111,752.94	64,708.55
MANAGEMENT FEES	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,592.00)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)	(6,789.76)
Interest Expense - Debt													
Interest Expense - Leases													
Interest Income													
TOTAL FINANCING ACTIVITY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OTHER INCOME (EXPENSE)													
Non-Operating Revenue													
Transfers from County													
Depreciation & Amortization	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
Incentive Compensation													
Partnership Income/(Loss)													
Gain/(Loss) On Disposal Of Assets													
Other Expenses / Capital Reserve													
Taxes													
TOTAL OTHER INCOME (EXPENSE)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)	(95.53)
NET INCOME	48,338.97	(13,339.17)	(10,416.56)	(19,444.52)	(50,914.28)	(36,388.72)	(55,116.20)	10,011.57	896.40	29,116.35	76,942.82	104,867.65	57,823.26
Paid Rounds	4,469.00	3,726.00	3,320.00	3,124.00	2,583.00	2,639.00	1,856.00	3,473.00	3,089.00	3,355.00	4,177.00	4,978.00	4,711.00
Annual Pass Rounds	405.00	322.00	317.00	354.00	371.00	298.00	207.00	404.00	416.00	496.00	535.00	577.00	599.00
Other Rounds	290.00	253.00	237.00	285.00	245.00	238.00	179.00	239.00	256.00	242.00	316.00	294.00	287.00
Total Rounds	5,164.00	4,301.00	3,874.00	3,763.00	3,199.00	3,175.00	2,242.00	4,116.00	3,761.00	4,093.00	5,028.00	5,849.00	5,597.00
Revenue/Paid Rounds	58.97	54.84	58.44	53.27	51.45	60.62	54.73	59.22	59.59	62.59	64.72	62.42	59.68
Revenue/Total Rounds	51.03	47.51	50.08	44.23	41.54	50.39	45.31	49.97	48.94	51.30	53.77	53.12	50.24

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

	4/30/2025	9/30/2024	4/30/2024
ASSETS			
CURRENT ASSETS:			
Cash			
Cash - Depository	506,481	305,463	432,040
Cash - Payroll	41,294	30,096	28,094
Cash - Manual Checks	850	850	850
Cash - Housebank & Other	500	500	500
Total Cash	549,125	336,909	461,485
Accounts Receivable			
A/R Member	5,337	1,543	2,338
Total Accounts Recievable	5,337	1,543	2,338
Other Current Assets			
Inventory - Merchandise	127,510	105,046	132,000
Prepaid Insurance	19,295	48,286	17,656
Prepaid Exp - Other	29,019	11,397	24,327
Total Other Current Assets	175,823	164,729	173,983
TOTAL CURRENT ASSETS	730,286	503,180	637,806
PROPERTY, PLANT AND EQUIPMENT:			
Buildings & Improvements	30,598	30,598	30,598
Machinery & Equipment	5,550	5,550	5,550
Property Plant and Equipment	36,148	36,148	36,148
Accumulated Depreciation	(34,076)	(33,407)	(32,930)
TOTAL PROPERTY, PLANT AND EQUIPMENT	2,072	2,741	3,218
TOTAL ASSETS	732,358	505,921	641,024

The Golf Club at Cypress Head
For the Seven Months Ending Wednesday, April 30, 2025

	4/30/2025	9/30/2024	4/30/2024
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accts Pay - Trade	97,183	44,253	100,569
Accts Pay - Other	185,905	202,954	209,887
Accrued Expenses	0	1,097	0
Accrued Payroll	55,540	49,798	44,084
Accrued Taxes	16,243	8,452	15,404
Deferred Revenue	152,942	199,364	147,513
TOTAL CURRENT LIBILITIES	507,813	505,918	517,457
TOTAL LIABILITIES	507,813	505,918	517,457
STOCKHOLDER'S EQUITY			
Retained Earnings	224,545	3	123,567
Net Retained Earnings	224,545	3	123,567
Stockholders Equity	224,545	3	123,567
TOTAL STOCKHOLDER'S EQUITY	224,545	3	123,567
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	732,358	505,921	641,024

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

General Ledger

Ranges: From: To:
Date: 4/1/2025 4/30/2025
Account: First Last

Sorted By: Account
Include: Posting, Unit
Print Currency In: Functional (Z-US$)

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	10020-5950-900	Cash - Course Depository NEW	$457,155.14	$286,510.57	$237,184.35	$49,326.22	$506,481.36
	10050-5950-900	Cash - Course Payroll BMO	$40,231.52	$88,125.40	$87,062.82	$1,062.58	$41,294.10
	10100-5950-900	Cash - Course Other	$850.00	$0.00	$0.00	$0.00	$850.00
	10180-5950-900	Cash - Pro Shop Bank	$500.00	$0.00	$0.00	$0.00	$500.00
	11160-5950-900	A/R Member	$2,477.59	$28,516.13	$25,656.28	$2,859.85	$5,337.44
	12000-5950-900	Inventory - Merchandise	$128,767.69	$22,317.25	$23,575.28	($1,258.03)	$127,509.66
	13020-5950-900	Prepaid Insurance	$29,279.54	$0.00	$9,984.79	($9,984.79)	$19,294.75
	13040-5950-900	Prepaid Exp - Other	$30,479.23	$0.00	$1,460.39	($1,460.39)	$29,018.84
	20100-5950-900	Machinery & Equipment	$5,550.40	$0.00	$0.00	$0.00	$5,550.40
	20160-5950-900	Buildings and Improvements	$30,597.54	$0.00	$0.00	$0.00	$30,597.54
	22040-5950-900	Accum. Deprec - Mach & Equip	($5,410.54)	$0.00	$23.12	($23.12)	($5,433.66)
	22080-5950-900	Accum. Deprec - Buildings	($28,570.01)	$0.00	$72.41	($72.41)	($28,642.42)
	30000-5950-900	Accts Pay - Trade	($104,517.21)	$119,908.96	$112,574.98	$7,333.98	($97,183.23)
	30040-5950-900	Accts Pay - Other	($185,904.55)	$544.11	$544.11	$0.00	($185,904.55)
	31020-5950-900	Accrued Payroll	($47,249.42)	$30,101.38	$37,910.42	($7,809.04)	($55,058.46)
	31080-5950-900	Accrued Tips Payable	($108.00)	$372.00	$746.00	($374.00)	($482.00)
	31220-5950-900	Accrued Sales Tax	($18,028.64)	$18,028.64	$16,243.48	$1,785.16	($16,243.48)
	31400-5950-900	Accrued City Surcharge	$0.00	$4,477.69	$4,477.69	$0.00	$0.00
	32000-5950-900	Deferred Rev - Rainchecks	($9,935.94)	$937.81	$511.01	$426.80	($9,509.14)
	32020-5950-900	Deferred Rev - Outing Deposits	($19,807.28)	$4,935.62	$3,622.95	$1,312.67	($18,494.61)
	32040-5950-900	Deferred Rev - Legacy GF Passes	($17,357.48)	$2,893.03	$0.00	$2,893.03	($14,464.45)
	32050-5950-900	Deferred Revenue - Cypress GF Passes	($41,398.21)	$7,645.16	$0.00	$7,645.16	($33,753.05)
	32070-5950-900	Deferred Rev - Gift Cards	($32,487.19)	$1,615.64	$970.40	$645.24	($31,841.95)
	32100-5950-900	Deferred Rev - Credit Books	($11,830.71)	$1,101.04	$1,323.00	($221.96)	($12,052.67)
	32120-5950-900	Deferred Rev - Trail Fee Pass	($36,562.16)	$6,856.31	$0.00	$6,856.31	($29,705.85)
	32180-5950-900	Deferred Rev - Package Deposits	$0.00	$1.00	$3,121.00	($3,120.00)	($3,120.00)
	49020-5950-900	Retained Earnings - Current	($2.72)	$0.00	$0.00	$0.00	($2.72)
	50000-5950-100	Green Fees - Annual Pass	($52,729.32)	$0.00	$10,538.19	($10,538.19)	($63,267.51)
	50030-5950-100	Green Fees - League	($0.32)	$0.00	$0.00	$0.00	($0.32)
	5003A-5950-100	Green Fee - Group	($74,216.52)	$0.00	$12,955.33	($12,955.33)	($87,171.85)
	50040-5950-100	Green Fees - Member	($1,053.14)	$86.62	$299.15	($212.53)	($1,265.67)
	5006A-5950-100	Green Fee - Junior	($5,704.37)	$0.00	$1,097.84	($1,097.84)	($6,802.21)
	50070-5950-100	Green Fees - (surcharge)	($20,646.80)	$4,477.69	$8,955.38	($4,477.69)	($25,124.49)
	5007A-5950-100	Green Fee - League	($46,426.87)	$0.00	$10,897.50	($10,897.50)	($57,324.37)
	5010A-5950-100	Green Fee - Non-Resident (Standard)	($139,770.03)	$0.00	$30,139.50	($30,139.50)	($169,909.53)
	5011A-5950-100	Green Fee - Non-Revenue	$0.00	$0.00	$20.00	($20.00)	($20.00)
	5012A-5950-100	Green Fee - Outing	($41,142.00)	$0.00	$13,600.00	($13,600.00)	($54,742.00)
	5014A-5950-100	Green Fee - Resident	($139,009.78)	$14,919.74	$43,609.96	($28,690.22)	($167,700.00)
	5015A-5950-100	Green Fee - Senior	($133,465.69)	$0.00	$31,098.00	($31,098.00)	($164,563.69)
	5019A-5950-100	Green Fee - Wholesale	($3,971.95)	$0.00	$2,461.80	($2,461.80)	($6,433.75)
	50500-5950-200	Cart Fee 18	($339,344.67)	$0.00	$77,292.89	($77,292.89)	($416,637.56)
	50520-5950-200	Cart Fee - Annual Trail	($52,402.70)	$0.00	$6,856.31	($6,856.31)	($59,259.01)
	52090-5950-600	Handicap Fee	($6,345.00)	$0.00	$120.00	($120.00)	($6,465.00)
	52150-5950-600	Lessons	($6,921.45)	$0.00	$1,570.00	($1,570.00)	($8,491.45)
	52280-5950-600	Rental Clubs	($6,872.56)	$0.00	$1,982.00	($1,982.00)	($8,854.56)
	52310-5950-600	Retail	($152,291.54)	$0.00	$33,476.81	($33,476.81)	($185,768.35)
	53050-5950-220	Range Pass Revenue	($39,393.52)	$0.00	$9,207.25	($9,207.25)	($48,600.77)
	56120-5950-100	City Surcharge R & R	($20,644.81)	$0.00	$4,477.69	($4,477.69)	($25,122.50)
	60000-5950-600	COGS - Merchandise - Accessories	$107,915.47	$23,258.51	$0.00	$23,258.51	$131,173.98
	70000-5950-100	Gross Payroll - Salaried	$70,933.88	$15,701.20	$3,925.30	$11,775.90	$82,709.78
	70000-5950-600	Gross Payroll - Salaried	$25,876.09	$5,907.46	$1,224.11	$4,683.35	$30,559.44
	70000-5950-900	Gross Payroll - Salaried	$86,728.85	$19,351.56	$4,704.76	$14,646.80	$101,375.65
	70000-5950-950	Gross Payroll - Salaried	$41,788.98	$10,184.07	$1,980.77	$8,203.30	$49,992.28

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	70010-5950-100	Gross Payroll - Hourly	$174,883.99	$36,603.00	$7,320.98	$29,282.02	$204,166.01
	70010-5950-200	Gross Payroll - Hourly	$86,319.22	$25,971.72	$6,113.24	$19,858.48	$106,177.70
	70010-5950-600	Gross Payroll - Hourly	$39,401.17	$9,503.68	$2,604.50	$6,899.18	$46,300.35
	70010-5950-900	Gross Payroll - Hourly	$769.98	$212.16	$88.62	$123.54	$893.52
	71000-5950-100	Payroll Tax - FICA	$18,257.30	$3,917.27	$860.34	$3,056.93	$21,314.23
	71000-5950-200	Payroll Tax - FICA	$6,705.97	$1,996.30	$467.66	$1,528.64	$8,234.61
	71000-5950-600	Payroll Tax - FICA	$4,800.75	$1,159.68	$292.88	$866.80	$5,667.55
	71000-5950-900	Payroll Tax - FICA	$6,454.10	$1,397.98	$366.69	$1,031.29	$7,485.39
	71000-5950-950	Payroll Tax - FICA	$3,075.10	$760.37	$151.53	$608.84	$3,683.94
	71010-5950-100	Payroll Tax - UC	$746.50	$32.02	$0.00	$32.02	$778.52
	71010-5950-200	Payroll Tax - UC	$475.02	$138.21	$0.00	$138.21	$613.23
	71010-5950-600	Payroll Tax - UC	$212.44	$32.60	$0.00	$32.60	$245.04
	71010-5950-900	Payroll Tax - UC	$113.15	$1.40	$25.40	($24.00)	$89.15
	71010-5950-950	Payroll Tax - UC	$53.66	$0.00	$0.00	$0.00	$53.66
	71020-5950-100	Payroll Tax - WC	$4,108.77	$632.47	$0.00	$632.47	$4,741.24
	71020-5950-200	Payroll Tax - WC	$1,404.38	$321.02	$0.00	$321.02	$1,725.40
	71020-5950-600	Payroll Tax - WC	$1,079.30	$192.82	$0.00	$192.82	$1,272.12
	71020-5950-900	Payroll Tax - WC	$1,557.33	$240.37	$0.00	$240.37	$1,797.70
	71020-5950-950	Payroll Tax - WC	$709.63	$135.05	$0.00	$135.05	$844.68
	71030-5950-100	Benefits	$16,945.38	$6,660.42	$3,808.59	$2,851.83	$19,797.21
	71030-5950-200	Benefits	$151.99	$1,103.55	$1,078.27	$25.28	$177.27
	71030-5950-600	Benefits	$8,195.70	$2,526.79	$1,155.33	$1,371.46	$9,567.16
	71030-5950-900	Benefits	$14,760.81	$5,219.17	$2,791.39	$2,427.78	$17,188.59
	71030-5950-950	Benefits	$3,834.24	$886.37	$244.84	$641.53	$4,475.77
	80110-5950-200	Cart Supplies	$209.63	$64.97	$0.00	$64.97	$274.60
	80120-5950-100	Chemicals	$5,794.08	$1,810.00	$0.00	$1,810.00	$7,604.08
	80170-5950-100	Course Accessories	$3,908.58	$357.00	$0.00	$357.00	$4,265.58
	80230-5950-100	Fertilizer	$38,348.27	$6,625.39	$0.00	$6,625.39	$44,973.66
	80270-5950-100	Fuel	$8,150.12	$2,204.66	$0.00	$2,204.66	$10,354.78
	80280-5950-100	Fungicides	$4,683.74	$0.00	$0.00	$0.00	$4,683.74
	80320-5950-100	Herbicides	$10,256.86	$1,502.79	$0.00	$1,502.79	$11,759.65
	80370-5950-100	Insecticides	($1,337.77)	$415.14	$0.00	$415.14	($922.63)
	80380-5950-900	Janitorial Supplies	$2,492.38	$1,581.06	$0.00	$1,581.06	$4,073.44
	80420-5950-900	Laundry/Uniforms	$180.30	$0.00	$0.00	$0.00	$180.30
	80520-5950-900	Office Supplies	$3,231.56	$565.50	$0.00	$565.50	$3,797.06
	80590-5950-600	Printing	$1,300.00	$0.00	$0.00	$0.00	$1,300.00
	80590-5950-900	Printing	$48.44	$0.00	$0.00	$0.00	$48.44
	80610-5950-220	Range Balls	$3,625.00	$0.00	$0.00	$0.00	$3,625.00
	80620-5950-220	Range Equipment	$1,110.73	$0.00	$0.00	$0.00	$1,110.73
	80630-5950-220	Range Expenses	$98.19	$1,141.01	$0.00	$1,141.01	$1,239.20
	80690-5950-100	Sand/Topdress	$7,072.35	$0.00	$0.00	$0.00	$7,072.35
	80710-5950-100	Seeds/Trees	$2,994.60	$5,191.50	$0.00	$5,191.50	$8,186.10
	80730-5950-100	Small Tools	$663.89	$0.00	$0.00	$0.00	$663.89
	80780-5950-200	Supplies	$101.50	$0.00	$0.00	$0.00	$101.50
	80780-5950-600	Supplies	$1,802.68	$918.25	$0.00	$918.25	$2,720.93
	80810-5950-600	Tournament Expense	$371.78	$0.00	$0.00	$0.00	$371.78
	81010-5950-900	Alarm System	$1,264.00	$142.00	$0.00	$142.00	$1,406.00
	81090-5950-200	Cart Repairs	$957.57	$408.00	$0.00	$408.00	$1,365.57
	81130-5950-900	Computer Service	$14,613.21	$1,466.19	$0.00	$1,466.19	$16,079.40
	81140-5950-900	Contract Cleaning	$6,000.00	$1,000.00	$0.00	$1,000.00	$7,000.00
	81200-5950-900	Guest Relations	$4,960.00	$6,682.80	$0.00	$6,682.80	$11,642.80
	81220-5950-600	Handicap Expense	$6,121.50	$0.00	$0.00	$0.00	$6,121.50
	81250-5950-100	Irrigation	$5,622.21	$967.80	$0.00	$967.80	$6,590.01
	81270-5950-600	Lesson Expense	$0.00	$1,500.00	$0.00	$1,500.00	$1,500.00
	81340-5950-100	Repair & Maint - Paths	$838.40	$0.00	$0.00	$0.00	$838.40
	81350-5950-100	Repair & Maint - Equipment	$10,053.96	$4,266.68	$0.00	$4,266.68	$14,320.64
	81350-5950-220	Repair & Maint - Equipment	$23.45	$0.00	$0.00	$0.00	$23.45
	81350-5950-900	Repair & Maint - Equipment	$4,847.73	$3,987.00	$0.00	$3,987.00	$8,834.73
	81360-5950-100	Repair & Maint - Building	$1,935.42	$81.63	$0.00	$81.63	$2,017.05
	81360-5950-900	Repair & Maint - Building	$5,257.31	$1,264.92	$0.00	$1,264.92	$6,522.23

TRIAL BALANCE SUMMARY FOR 2024

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	82020-5950-100	Equipment Lease	$1,110.00	$185.00	$0.00	$185.00	$1,295.00
	82060-5950-900	Off-Site Storage	$1,030.00	$206.00	$0.00	$206.00	$1,236.00
	83000-5950-100	Utlities - Electric	$1,476.59	$215.99	$0.00	$215.99	$1,692.58
	83000-5950-200	Utilities - Electric	$4,039.72	$729.62	$0.00	$729.62	$4,769.34
	83020-5950-100	Utlities - Other	$10,195.25	$3,300.34	$0.00	$3,300.34	$13,495.59
	83020-5950-900	Utilities - Other	$14,470.69	$2,248.07	$0.00	$2,248.07	$16,718.76
	83030-5950-900	Utilities - Telephone/Fax	$854.74	$183.67	$0.00	$183.67	$1,038.41
	83050-5950-100	Utlities - Water	$1,773.80	$536.24	$0.00	$536.24	$2,310.04
	84020-5950-950	Adv/Promo - Direct Mail	$4,328.00	$0.00	$0.00	$0.00	$4,328.00
	84040-5950-950	Adv/Promo - Mktg/Bus Dev	$1,989.77	$115.52	$0.00	$115.52	$2,105.29
	84070-5950-950	Adv/Promo - Organizations	$1,205.00	$0.00	$0.00	$0.00	$1,205.00
	84080-5950-950	Adv/Promo - Promotional	$342.20	$0.00	$0.00	$0.00	$342.20
	84110-5950-950	Adv/Promo - Website	$1,500.00	$0.00	$0.00	$0.00	$1,500.00
	85020-5950-900	Bank Charges	$2,551.99	$456.79	$0.00	$456.79	$3,008.78
	85050-5950-900	Cash Short/(Over)	($53.10)	$81.59	$108.27	($26.68)	($79.78)
	85060-5950-900	Cell Phone	$1,440.00	$240.00	$0.00	$240.00	$1,680.00
	85070-5950-900	City Surcharge R & R	$20,644.81	$4,477.69	$0.00	$4,477.69	$25,122.50
	85120-5950-900	Credit Card Discounts	$32,280.41	$11,654.20	$127.70	$11,526.50	$43,806.91
	85140-5950-900	Donations	$91.97	$0.00	$515.00	($515.00)	($423.03)
	85150-5950-900	Dues & Subscriptions	$285.00	$175.00	$0.00	$175.00	$460.00
	85160-5950-100	Education & Training	$82.00	$0.00	$0.00	$0.00	$82.00
	85190-5950-100	Employee Relations	$835.25	$0.00	$0.00	$0.00	$835.25
	85190-5950-900	Employee Relations	$5,355.27	$27.84	$0.00	$27.84	$5,383.11
	85200-5950-100	Employee Testing	$85.66	$0.00	$0.00	$0.00	$85.66
	85280-5950-900	Insurance Expense	$59,908.74	$9,984.79	$0.00	$9,984.79	$69,893.53
	85320-5950-900	Member Relations	$670.20	$2,617.47	$0.00	$2,617.47	$3,287.67
	85390-5950-900	O/S - Accounting	$11,875.00	$0.00	$0.00	$0.00	$11,875.00
	85480-5950-900	Payroll Processing Fee	$2,815.58	$424.06	$0.00	$424.06	$3,239.64
	85490-5950-900	Postage/Shipping	$1,230.68	$42.66	$1.00	$41.66	$1,272.34
	85610-5950-100	Tax/Licenses/Fees	$465.00	$250.00	$0.00	$250.00	$715.00
	85610-5950-900	Tax/Licenses/Fees	$55.00	$0.00	$30.00	($30.00)	$25.00
	85720-5950-900	Travel - Other	$3,526.67	$106.12	$0.00	$106.12	$3,632.79
	90000-5950-900	Management Fee	$40,738.56	$6,789.76	$0.00	$6,789.76	$47,528.32
	98020-5950-900	Deprec - Mach & Equip	$138.72	$23.12	$0.00	$23.12	$161.84
	98040-5950-900	Deprec - Buildings	$434.46	$72.41	$0.00	$72.41	$506.87
	R002A-5950-100	Rounds - Annual	19,508.00	599.00	0.00	599.00	20,107.00
	R003A-5950-100	Rounds - Group	22,918.00	493.00	0.00	493.00	23,411.00
	R005A-5950-100	Rounds - Green Fee - Hotel	44.00	0.00	0.00	0.00	44.00
	R006A-5950-100	Rounds - Green Fee - Junior	3,292.00	154.00	0.00	154.00	3,446.00
	R007A-5950-100	Rounds - Green Fee - League	18,960.00	456.00	0.00	456.00	19,416.00
	R010A-5950-100	Rounds - Green Fee - Non-Resident (Standard)	17,394.00	760.00	0.00	760.00	18,154.00
	R011A-5950-100	Rounds - Green Fee - Non-Revenue	1,098.00	25.00	0.00	25.00	1,123.00
	R012A-5950-100	Rounds - Green Fee - Outing	12,886.00	373.00	0.00	373.00	13,259.00
	R014A-5950-100	Rounds - Resident	80,198.00	1,607.00	0.00	1,607.00	81,805.00
	R015A-5950-100	Rounds - Green Fee - Senior	34,012.00	808.00	0.00	808.00	34,820.00
	R016A-5950-100	Rounds - Green Fee - Staff	7,936.00	193.00	0.00	193.00	8,129.00
	R017A-5950-100	Rounds - Green Fee - Trade	4,396.00	69.00	0.00	69.00	4,465.00
	R018A-5950-100	Rounds - Green Fee - Twilight	31.00	0.00	0.00	0.00	31.00
	R019A-5950-100	Rounds - Green Fee - Wholesale	772.00	60.00	0.00	60.00	832.00
	RCMWD-5950-100	Rounds - Complimentary - Weekday	15,846.00	0.00	0.00	0.00	15,846.00
	REMWD-5950-100	Rounds - Employee - Weekday	21,589.00	0.00	0.00	0.00	21,589.00
	RMBWD-5950-100	Rounds - Member - Weekday	80,170.00	0.00	0.00	0.00	80,170.00
	RPKWD-5950-100	Rounds - Peak - Weekday	450,023.00	0.00	0.00	0.00	450,023.00
	RPKWE-5950-100	Rounds - Peak - Weekend	5,071.00	0.00	0.00	0.00	5,071.00

	Accounts	Beginning Balance	Debit	Credit	Net Change	Ending Balance
Grand Totals:	**167**	**$0.00**	**$907,707.25**	**$907,707.25**	**$0.00**	**$0.00**

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (E13) Port Orange Community Trust Annual Update

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Presentation item only.

SUMMARY: The Port Orange Community Trust is required to make an annual presentation to City Council setting forth its activities, accomplishments, and contributions to the City and its residents and provide a forum for Council to provide feed-back and offer suggestions for enhancement of the collaboration or modifications of the agreement between the City and Port Orange Community Trust.

PRESENTER: Dawn LeBeau, Executive Director of POCT

ATTACHMENTS:

Susan Lovallo	Created/Initiated - 4/28/2025
Susan Lovallo	Approved - 4/28/2025
Wayne Clark	Final Approval - 5/23/2025

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (F15) Parks and Recreation Board Appointments (x2)

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to appoint two applicants to serve a 3-year term on the Parks and Recreation Board.

SUMMARY: There are currently two openings on the Parks and Recreation Board. Four people, Brian Syford, Christina Berry, Jeff Brabham, and Kathleen Mallegol, have expressed interest in these two positions. The appointments are for a 3-year term that will expire in February 2028. Their applications are attached for your consideration. No other applications have been received by the Clerk's Office.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Brian Syford Application 4-24-2025	Brian Syford Application 4-24-2025.pdf
2.	Christina Berry Applicaiton 3-20-2025	Christina Berry Applicaiton 3-20-2025.pdf
3.	Jeff Brabham	Jeff Brabham.pdf
4.	Kathleen Mallegol Application 4-22-2025	Kathleen Mallegol Application 4-22-2025.pdf

Amanda Bonin	Created/Initiated - 5/16/2025
Robin Fenwick	Approved - 5/16/2025
Wayne Clark	Final Approval - 5/23/2025

From: noreply@civicplus.com
To: City Clerk
Subject: [EXT] Online Form Submittal: Advisory Boards and Commissions Volunteer Application
Date: Wednesday, April 23, 2025 7:24:08 PM

Advisory Boards and Commissions Volunteer Application

Step 1

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.

Please choose the Board(s) / Commission(s) for which you wish to apply. If applying for more than one Board / Commission, indicate the order of preference in the space below the list.

Check the boards you wish to apply for	Parks and Recreation Advisory Board
Order of Preference	*Field not completed.*

If you are submitting an application to serve as the Interim Council Member for District 2, a resume must be uploaded below.

All of the above boards / commissions are subject to the "Sunshine Law", Chapter 286, F.S.

* Members of these boards / commissions are required to file financial disclosures within 30 days of date of appointment.

Personal Information

First Name	Brian
Last Name	Syford
Primary Phone	3865470949
Alternate Phone	*Field not completed.*
Email Address	Briansyford@yahoo.com
Are you a registered	Yes

voter in Port Orange?	
Address	4478 Hidden Village Drive, Port Orange, FL, USA
City	Port Orange
State	FL
Zip Code	32127
Preferred Mailing Address	4478 Hidden Village Drive, Port Orange, FL, USA
City Council District	2
Can you regularly attend meetings?	Yes
Are you currently serving on a Federal, State, County, or City Board?	No
If yes, which board(s)?	*Field not completed.*
References	
Please list three references (business and / or personal)	
Reference 1	Shannon Yannone, Deland, 386-748-1356
Reference 2	Edward Staudt, Port Orange, 386-679-6987
Reference 3	Don Burnett, Port Orange, 386-295-5760
Education	
High School	Spruce Creek High School
Date Graduated High School	6/1/1989
College	Embry Riddle aeronautical University
Date Graduated College	5/20/1993
Degree	Bachelor
Additional Information	

Work Experience	Operations Manager at MBI Direct Mail + Digital
Interests / Activities	All sports
Community Involvement	Umpiring for many years
Why do you desire to serve on these boards?	Make a difference in the community I've been a part of for over 45 years.
Additional Information	*Field not completed.*
Resume	Brian Syford - Resume.doc

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. *

Acceptance	I agree
Type your name to sign	Brian Syford
Date	4/23/2025

Note: If you have questions concerning the duties and responsibilities of any of the above Boards / Commissions, please contact the City Clerk's Office at cityclerk@port-orange.org or 386-506-5563.

Email not displaying correctly? View it in your browser.

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	Christina Berry
Address	1008 Tompkins Dr
City	Port Orange
State	FL
ZIP Code	32129
Phone Number	3863147583
Email Address	clberraw86@gmail.com
Which boards would you like to serve on?	• Town Center CRA Board • Planning Commission • Councilmember • Eastport CRA Board • Golf Advisory Board • Parks and Recreation Advisory Board • Environmental 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 love being involved in my community.

Reference Information

i.

Full Name

Susie

Address

1008 Tompkins Dr

City

Port Orange

State

FL

ZIP Code

32129

Phone Number

2075772090

ii.

Full Name

Heather Leblanc

Address

330 whipple tree ln

City

Fayetteville

State

Nc

ZIP Code

28324

Phone Number

+1 (910) 600-9657

iii.

Full Name

Susie crossley

Address

1008 Tompkins Dr

City

Port Orange

State

FL

ZIP Code

32129

Phone Number

2075772090

Work Experience	Medicine Shoppe as a pharmacy technician
Interests / Activities	I love animals. I love being a content creator with my senior work bestie.
Community Involvement	None at the moment however in the past I have been apart of the entertainment board.

You may upload a resume to outline your educational, work and community service experiences.

Resume Christina B. Resume 2024 (1).docx

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 03/20/2025

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!

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	Jeff Brabham
Address	5465 Carmody Lake Drive
City	Port Orange
State	FL
ZIP Code	32128
Phone Number	5613548740
Email Address	brabhamjeff@yahoo.com
Which boards would you like to serve on?	• Parks and Recreation Advisory Board • Environmental Advisory Board • Councilmember
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?	To be involved in my community where I pay taxes.

Reference Information

i.

Full Name

Nick DeJulio

Address

1450 W Granada Blvd Suite 1

City

Ormond Beach

State

Florida

ZIP Code

32174

Phone Number

3866719269

ii.

Full Name

Kathy Hopkins

Address

3803 Birch Mountain Road

City

Port Orange

State

Fl

ZIP Code

32127

Phone Number

2567173580

iii.

Full Name

Joe Brabham

Address

7442 Canal Drive

City

Lake Worth

State

Fl

ZIP Code

33467

Phone Number

9548016998

Work Experience	I have spent 30 years in the Financial Services Industry, working for companies and as an Entrepeneur. I currently work as a Comprehensive Retirement Planner with American Senior Benefits.
Interests / Activities	Helping Others. Active at Grace Episcopal Church.,
Community Involvement	Assisting people with there retirement. Sponsoring multiple events throughout the year at the Port Orange Adult Activity Center. Volunteer with Second Harvest Food Bank, Halifax Urban Ministries and Grace Episcopal Church in feeding the needy on a weekly basis.

You may upload a resume to outline your educational, work and community service experiences.

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 01/28/2025

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!

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	Kathleen Mallegol
Address	200 Poinciana Ave
City	Port Orange
State	FL
ZIP Code	32127
Phone Number	3862871162
Email Address	daytonabeach@donutnv.com
Which boards would you like to serve on?	• Parks and Recreation Advisory Board • Environmental Advisory Board
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 pride myself in being an active member of our community and wish to do so in a deeper capacity.

Reference Information

i.

Full Name

Daniel Mallegol

Address

200 Poinciana Ave

City

Port Orange

State

FL

ZIP Code

32127

Phone Number

3864279450

ii.

Full Name

Kelly Moore

Address

120 Oakmont Lane

City

New Smryna Beach

State

Florida

ZIP Code

32168

Phone Number

4012061619

iii.

Full Name

Amber Bollinger

Address

135 Lonetree Circle

City

Advance

State

North Carolina

ZIP Code

27006

Phone Number

336-402-0367

Work Experience	I currently own DonutNV - Daytona Beach which is based in Port Orange. Prior to that I was leading a team as a Purchase Order Manager with Cisco Systems for 2.5 years.
Interests / Activities	Networking, while at the same time helping the community, is something I just recently realized I enjoy doing. I love nature and currently tend a decent size pollinators garden in my yard. I have a beginner beekeeper certificate from NCSU.
Community Involvement	I am a Growth Coordinator for BNI - Port Orange. I'm a newly appointed ambassador with the PO/SD Chamber of Commerce. I'm also a Business Partner/Sponsor of Volusia County Schools and a new sponsor of the REC.

You may upload a resume to outline your educational, work and community service experiences.

Resume Kathy Resume 2025.docx

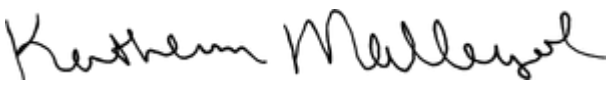
Signature Agreement

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 04/21/2025

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 6/3/2025

SUBJECT: (F16) Environmental Advisory Board Appointment

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to appoint one applicant to serve a 3-year term on the Environmental Advisory Board.

SUMMARY: There is currently one opening on the Environmental Advisory Board. Three people, Christina Berry, Jeff Brabham, and Kathleen Mallegol, have expressed interest in this position. The appointment is for a 3-year term that will expire in May 2028. Their applications are attached for your consideration. No other applications have been received by the Clerk's Office.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Christina Berry Applicaiton 3-20-2025	Christina Berry Applicaiton 3-20-2025.pdf
2.	Jeff Brabham	Jeff Brabham.pdf
3.	Kathleen Mallegol Application 4-22-2025	Kathleen Mallegol Application 4-22-2025.pdf

Amanda Bonin	Created/Initiated - 5/16/2025
Robin Fenwick	Approved - 5/16/2025
Wayne Clark	Final Approval - 5/23/2025

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	Christina Berry
Address	1008 Tompkins Dr
City	Port Orange
State	FL
ZIP Code	32129
Phone Number	3863147583
Email Address	clberraw86@gmail.com
Which boards would you like to serve on?	• Town Center CRA Board • Planning Commission • Councilmember • Eastport CRA Board • Golf Advisory Board • Parks and Recreation Advisory Board • Environmental 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 love being involved in my community.

Reference Information

i.

Full Name

Susie

Address

1008 Tompkins Dr

City

Port Orange

State

FL

ZIP Code

32129

Phone Number

2075772090

ii.

Full Name

Heather Leblanc

Address

330 whipple tree ln

City

Fayetteville

State

Nc

ZIP Code

28324

Phone Number

+1 (910) 600-9657

iii.

Full Name

Susie crossley

Address

1008 Tompkins Dr

City

Port Orange

State

FL

ZIP Code

32129

Phone Number

2075772090

Work Experience	Medicine Shoppe as a pharmacy technician
Interests / Activities	I love animals. I love being a content creator with my senior work bestie.
Community Involvement	None at the moment however in the past I have been apart of the entertainment board.

You may upload a resume to outline your educational, work and community service experiences.

Resume Christina B. Resume 2024 (1).docx

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 03/20/2025

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!

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	Jeff Brabham
Address	5465 Carmody Lake Drive
City	Port Orange
State	FL
ZIP Code	32128
Phone Number	5613548740
Email Address	brabhamjeff@yahoo.com
Which boards would you like to serve on?	• Parks and Recreation Advisory Board • Environmental Advisory Board • Councilmember
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?	To be involved in my community where I pay taxes.

Reference Information

i.

Full Name

Nick DeJulio

Address

1450 W Granada Blvd Suite 1

City

Ormond Beach

State

Florida

ZIP Code

32174

Phone Number

3866719269

ii.

Full Name

Kathy Hopkins

Address

3803 Birch Mountain Road

City

Port Orange

State

Fl

ZIP Code

32127

Phone Number

2567173580

iii.

Full Name

Joe Brabham

Address

7442 Canal Drive

City

Lake Worth

State

Fl

ZIP Code

33467

Phone Number

9548016998

Work Experience	I have spent 30 years in the Financial Services Industry, working for companies and as an Entrepeneur. I currently work as a Comprehensive Retirement Planner with American Senior Benefits.
Interests / Activities	Helping Others. Active at Grace Episcopal Church.,
Community Involvement	Assisting people with there retirement. Sponsoring multiple events throughout the year at the Port Orange Adult Activity Center. Volunteer with Second Harvest Food Bank, Halifax Urban Ministries and Grace Episcopal Church in feeding the needy on a weekly basis.

You may upload a resume to outline your educational, work and community service experiences.

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 01/28/2025

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!

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	Kathleen Mallegol
Address	200 Poinciana Ave
City	Port Orange
State	FL
ZIP Code	32127
Phone Number	3862871162
Email Address	daytonabeach@donutnv.com
Which boards would you like to serve on?	• Parks and Recreation Advisory Board • Environmental Advisory Board
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 pride myself in being an active member of our community and wish to do so in a deeper capacity.

Reference Information

i.

Full Name

Daniel Mallegol

Address

200 Poinciana Ave

City

Port Orange

State

FL

ZIP Code

32127

Phone Number

3864279450

ii.

Full Name

Kelly Moore

Address

120 Oakmont Lane

City

New Smryna Beach

State

Florida

ZIP Code

32168

Phone Number

4012061619

iii.

Full Name

Amber Bollinger

Address

135 Lonetree Circle

City

Advance

State

North Carolina

ZIP Code

27006

Phone Number

336-402-0367

Work Experience	I currently own DonutNV - Daytona Beach which is based in Port Orange. Prior to that I was leading a team as a Purchase Order Manager with Cisco Systems for 2.5 years.
Interests / Activities	Networking, while at the same time helping the community, is something I just recently realized I enjoy doing. I love nature and currently tend a decent size pollinators garden in my yard. I have a beginner beekeeper certificate from NCSU.
Community Involvement	I am a Growth Coordinator for BNI - Port Orange. I'm a newly appointed ambassador with the PO/SD Chamber of Commerce. I'm also a Business Partner/Sponsor of Volusia County Schools and a new sponsor of the REC.

You may upload a resume to outline your educational, work and community service experiences.

Resume Kathy Resume 2025.docx

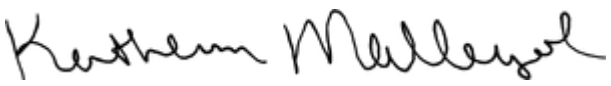
Signature Agreement

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 04/21/2025

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 6/3/2025

SUBJECT: (G17) First Reading - Ordinance No. 2025-16 - Rezoning/422 Jefferson Avenue

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2025-16.

SUMMARY: Planning Commission Action (5/22/25): Recommended Approval (Vote 6-0)

The proposed administrative rezoning (Case No. REZONING-25-0003) is to change the zoning of a ±0.26-acre property located at the southeast corner of Jefferson Avenue and Oak Street from Community Commercial (CC) to Neighborhood Preservation (NP). If approved, the existing single-family residence on the property will be demolished and replaced with a new single-family home, consistent with the surrounding neighborhood character.



Location map of 422 Jefferson Avenue

The subject property has been occupied by a single-family home since 1963. This home was damaged during Hurricane Ian, and the property owners are currently in the Volusia County Transform 386 Program to have the home demolished and a new home rebuilt in its place. In April 2025, a building permit application to rebuild a home on the subject property was submitted to the City for review. During the staff's review of the building permit, it was discovered that four lots, including the subject property, located on the east side of Jefferson Avenue, between Oak Street and B Street, were zoned Community Commercial (CC). Although these properties are currently designated as commercial on the City's Zoning Map, they have been developed and used for residential purposes since the early 1960s. Given the established residential zoning and existing homes on the adjacent properties to the west, south, and north, staff has concluded that these four lots should be rezoned to a residential district to ensure consistency with surrounding land uses and zoning patterns.

To proceed with the issuance of the building permit to rebuild the home on the subject property, it must be rezoned to a residential zoning district that allows single-family homes and provides the building setbacks that a new home must meet. To address the zoning inconsistency of the subject property, staff has prepared an administrative rezoning application to rezone the subject property to Neighborhood Preservation (NP). Rezoning the subject property to NP will bring it into conformance with the City's Comprehensive Plan, make it consistent with the surrounding area, and the historic and intended use of the subject property.

If approved, the new single-family home to be built on the subject property will need to

meet all requirements in the Land Development Code (LDC) and Florida Building Code (FBC). The proposed new home's finished floor will be elevated three (3) feet above the existing grade.

There are three (3) additional residential homes on lots zoned commercial that are located directly south of the subject property that are proposed to be included in a future administrative rezoning. To prevent delays in the permitting process for a Transform 386 grant project, staff proceeded with rezoning the subject property independently at this time. Staff will continue working with the owners of the adjacent lots to rezone their properties from Community Commercial (CC) to Neighborhood Preservation (NP) in the near future.

The staff report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2025-16 with exhibits	Ordinance No. 2025-16 with exhibits.pdf
2.	STAFF REPORT	STAFF REPORT .pdf
3.	Business Impact Estimate - ORD 2025-16 422 Jefferson Ave rezoning	Business Impact Estimate - ORD 2025-16 422 Jefferson Ave rezoning.docx

Penelope Cruz	Created/Initiated - 5/16/2025
Tim Burman	Approved - 5/19/2025
Shannon Balmer	Approved - 5/23/2025
Wayne Clark	Final Approval - 5/23/2025

ORDINANCE NO. 2025-16

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING PROPERTY LOCATED AT 422 JEFFERSON AVENUE, CONSISTING OF APPROXIMATELY ±0.26 ACRES FROM COMMUNITY COMMERCIAL (CC) TO NEIGHBORHOOD PRESERVATION (NP); AUTHORIZING REVISION OF THE OFFICIAL ZONING ATLAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, ±0.26 acres of the property located at 422 Jefferson Avenue to be rezoned from Community Commercial (CC) to Neighborhood Preservation (NP); and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission recommended approval of the proposed rezoning;

WHEREAS, the City Council has approved by majority vote of the members present the rezoning of the described property; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby rezone approximately ±0.26 acres of the property located at 422 Jefferson Avenue from Community Commercial (CC) to Neighborhood Preservation (NP), more particularly described in **Exhibit "A",** attached hereto**.**

Section 2. The City Council of the City of Port Orange does hereby approve, authorize and direct the revision of the City's Official Zoning Atlas to show

the classifications for the area as hereby rezoned as shown on **Exhibit "B"** attached hereto.

Section 3. This ordinance shall become effective immediately upon adoption.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the ___day of _____, 2025

Passed and adopted on second and final reading on the___day of _____, 2025

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

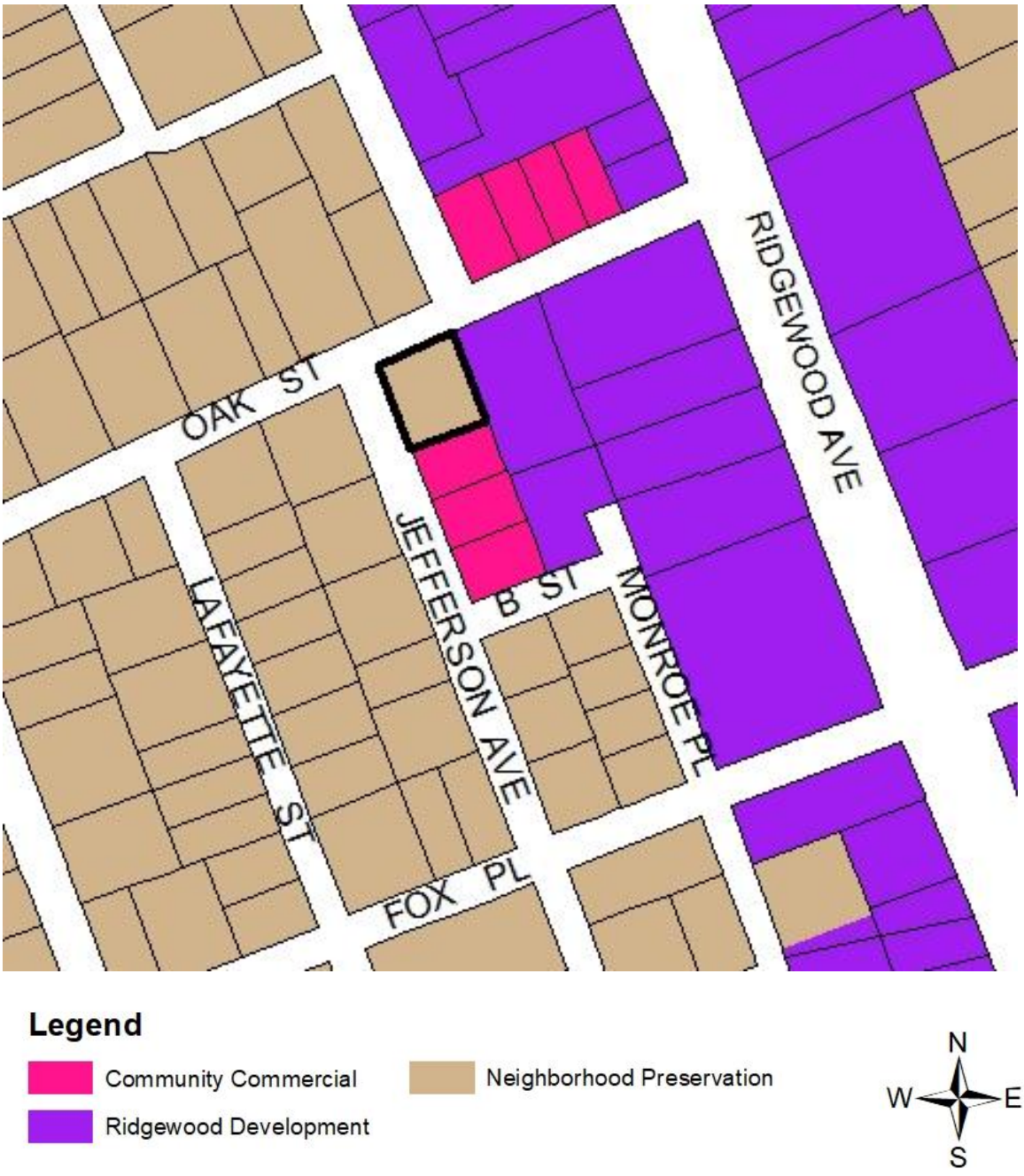
EXHIBIT “A”

Legal Description

LOTS 5 & 6 BLK J VIRGINIA HEIGHTS PORT ORANGE MB 9 PG 92 PER OR 5140 PG 4698 PER OR 8526 PG 2383

EXHIBIT “B”

Zoning Map



STAFF REPORT
ADMINISTRATIVE REZONING
CASE NO. REZONING-25-0003

REQUEST:	Rezone ±0.26 acres from Community Commercial (CC) to Neighborhood Preservation (NP)
LOCATION:	422 Jefferson Avenue (Figure 1 – Location Map)
OWNERS:	Gloria and Krystian Scholz
APPLICANT:	City of Port Orange
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 6-0 (May 22, 2025)
CITY COUNCIL:	June 3, 2025

PROPERTY OVERVIEW

The proposed administrative rezoning is to change the zoning of a ±0.26-acre property located at the southeast corner of Jefferson Avenue and Oak Street from Commercial (CC) to Neighborhood Preservation (NP). If approved, the existing single-family residence on the property will be demolished and replaced with a new single-family home, consistent with the surrounding neighborhood character.

Figure 1. Location Map



DISCUSSION

The subject property has been occupied by a single-family home since 1963. This home was damaged during Hurricane Ian and property owners are currently in the Volusia County Transform 386 Program to have the home demolished and a new home rebuilt in its place. In April 2025, a building permit application to rebuild a home on the subject property was submitted to the City for review. During staff's review of the building permit, it was discovered that four lots, including the subject property, located on the east side of Jefferson Avenue, between Oak Street and B Street, were zoned Community Commercial (CC). Although these properties are currently designated as commercial on the City's Zoning Map, they have been developed and used for residential purposes since the early 1960s. Given the established residential zoning and existing homes on the adjacent properties to the west, south, and north, staff has concluded that these four lots should be rezoned to a residential district to ensure consistency with surrounding land uses and zoning patterns.

There are three (3) additional lots located directly south of the subject property that could not be included in this administrative rezoning due to delays in obtaining the necessary authorization forms from the property owners. To prevent delays in the permitting process for a Transform 386 grant project, staff proceeded with rezoning the subject property independently at this time. Staff will continue working with the owners of the adjacent lots to rezone their properties from Commercial (CC) to Neighborhood Preservation (NP) in the near future.

To proceed with the issuance of the building permit to rebuild the home on the subject property, it must be rezoned to a residential zoning district that allows single-family homes and provides the building setbacks that a new home must meet. To address the zoning inconsistency of the subject property, staff has prepared an administrative rezoning application to rezone the subject property to Neighborhood Preservation (NP). Rezoning the subject property to NP will bring it into conformance with the City's Comprehensive Plan, make it consistent with the surrounding area and the historic and intended use of the subject property (see Figure 2).

The NP zoning district is intended to preserve the character, housing mix and density of existing older mixed-use neighborhoods by providing for compatible infill development and redevelopment of single-family detached dwellings.

The rezoning was reviewed according to the criteria established in Chapter 3, Section 7 of the Land Development Code (LDC) in terms of consistency with the Comprehensive Plan and consistency with the surrounding land uses and zoning.

If approved, the new single-family home to be built on the subject property will need to meet all requirements in the Land Development Code (LDC) and Florida Building Code (FBC). The proposed new home's finished floor will be elevated three (3) feet above the existing grade and the Base Flood elevation on piers.

COMPATIBILITY WITH SURROUNDING USES AND ZONING DISTRICTS

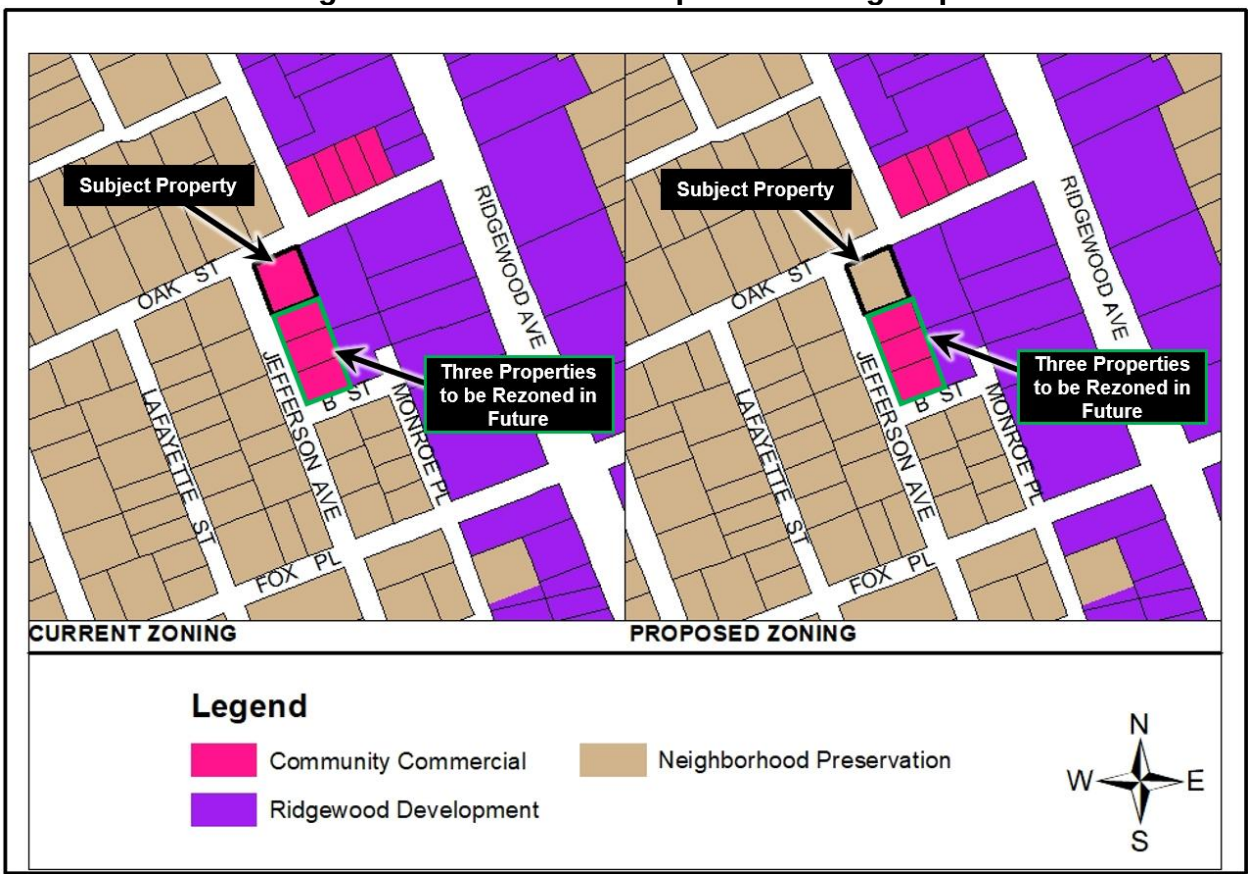
The proposed NP zoning district is appropriate for this location and is compatible with the surrounding properties. Table 1 summarizes the existing land use, zoning districts, and

Future Land Use designations of the adjacent properties, and Figure 2 shows the surrounding zoning districts of the adjacent properties.

Table 1. Surrounding Land Uses, FLU Designation, and Zoning Districts

Direction	Existing Land Use	Future Land Use Designation	Zoning District
North	Single-family home	*Urban Medium Density Residential (4-8 units/acre)*	Neighborhood Preservation (NP)
South	Single-family home	*Suburban Residential (2-4 units/acre)*	Community Commercial (CC)
East	City-owned Pond	*Commercial*	Ridgewood Development (RD)
West	Jefferson Avenue right-of-way and Single-family home	*Suburban Residential (2-4 units/acre)*	Neighborhood Preservation (NP)

Figure 2. Current and Proposed Zoning Map



CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is designated *Suburban Residential* (2-4 units/acre) on the City's Future Land Use Map. The proposed rezoning is consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan and is compatible with adjacent properties. Compatibility is defined in the Comprehensive Plan as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is negatively impacted by the other. The subject

property has been developed with a single-family home since 1963, and this residential use is consistent with the City's Comprehensive Plan and compatible with the surrounding properties.

The proposed Neighborhood Preservation (NP) zoning district is consistent with the current *Suburban Residential* Future Land Use (FLU) designation for the subject property. The *Suburban Residential* FLU designation typically supports detached or attached single-family homes and is intended for areas situated between collector and arterial roadways.

STAFF RECOMMENDATION

Staff recommends **approval** of the request to rezone ±0.26 acres from Community Commercial (CC) to Neighborhood Preservation (NP).

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. 2025-16 – Administrative rezoning to change the zoning of a ±0.26-acre property located at the southeast corner of Jefferson Avenue and Oak Street from Commercial (CC) to Neighborhood Preservation (NP). [Case No. REZONING-25-0003]

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 administrative rezoning is to change the zoning of a ±0.26-acre property located at the southeast corner of Jefferson Avenue and Oak Street from Commercial (CC) to Neighborhood Preservation (NP). If approved, the existing single-family residence on the property will be demolished and replaced with a new single-family home, consistent with the surrounding neighborhood character.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:
N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance: N/A

4. Additional information the governing body deems useful[2] (if any): N/A

[2] *You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses*.

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/3/2025

SUBJECT: (H18) FY 2025-2026 Budget Discussions (Preliminary Capital Improvement Plan, Capital Outlay and Fleet)

DEPARTMENT: Finance

GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life
4 - Economic Development
5 - Fiscal Sustainability
6 - Organizational Excellence

RECOMMENDED MOTION: Discussion item only. No motion required.

SUMMARY: Staff will present an overview of the following:

1. Preliminary Capital Improvement Plan (CIP)
2. Capital Outlay Requests
3. Fleet

PRESENTER: Mark Simpson

ATTACHMENTS:

1.	Budget Workshop June 3 2025 -v8 Final as of 2025-06-02	Budget Workshop June 3 2025 -v8 Final as of 2025-06-02.pdf

Mark Simpson	Created/Initiated - 5/1/2025
Mark Simpson	Approved - 5/1/2025
Wayne Clark	Final Approval - 5/29/2025

City of Port Orange
Fiscal Year 2026 Budget

- CIP, CAPITAL & FLEET REPLACEMENT

- JUNE 3, 2025

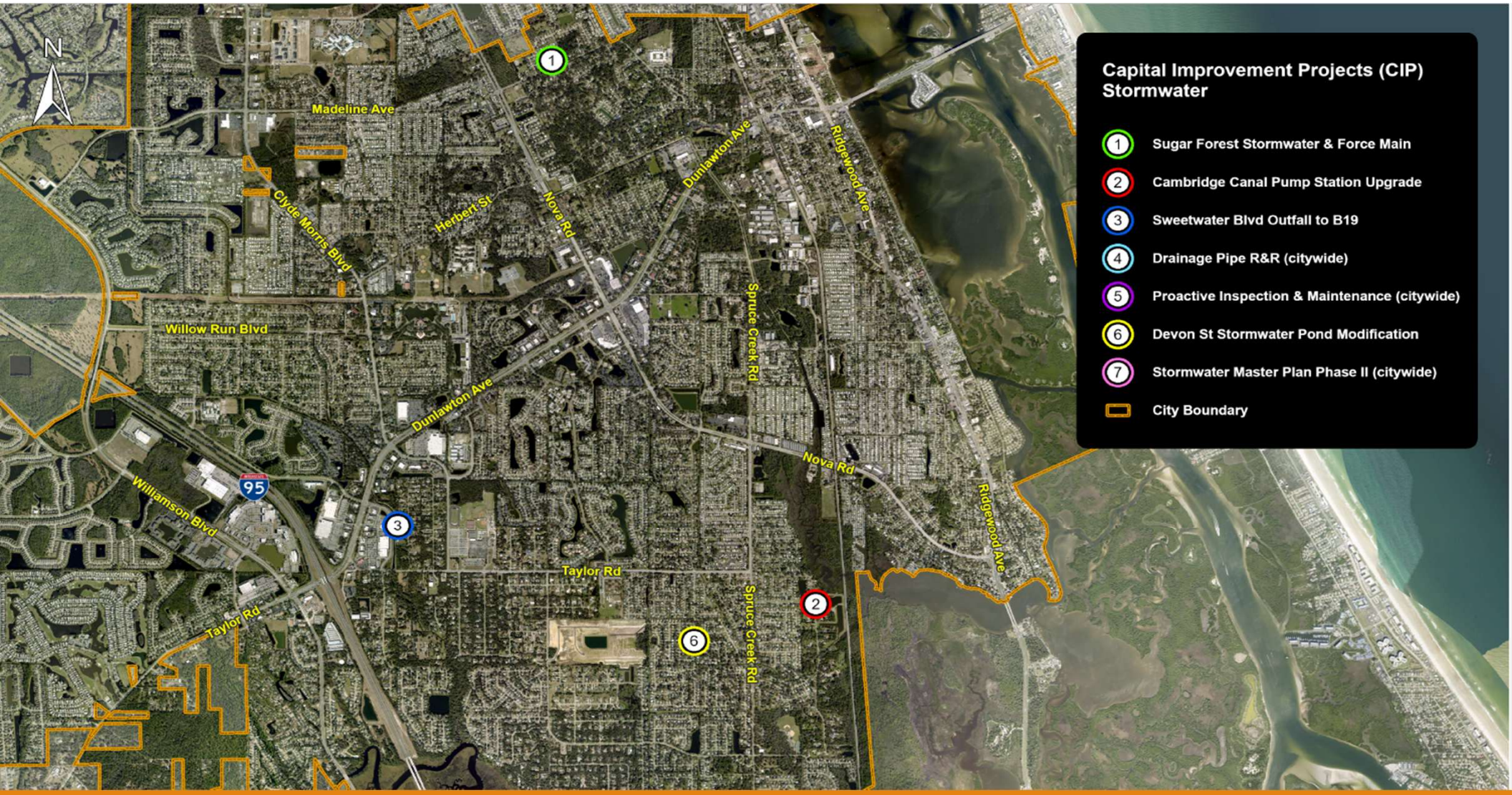
- PRESENTED BY: FINANCE BUDGET TEAM

Capital Improvement Plan (CIP)

STORMWATER

	Project	Cost	Stage	Funding Source
1	Sugar Forest Stormwater & Force Main	4,600,000	Construction	Grants/Stormwater Fees
2	Cambridge Canal Pump Station Upgrade	3,000,000	Construction	Grants/Stormwater Fees
	Total	$ 7,600,000		
3	Sweetwater Blvd Outfall to B19	750,000	Design/Construction	Stormwater Fees
4	Drainage Pipe R&R	725,000	Construction	Stormwater Fees
5	Proactive Inspection & Maintenance	300,000	Annual	Stormwater Fees
6	Devon St Stormwater Pond Modification	260,000	Design/Construction	Stormwater Fees
7	Stormwater Master Plan Phase II	60,000	Design	Stormwater Fees
	Total	$ 2,095,000		
	Total Funded by Stormwater	**$ 9,695,000**		

Stormwater	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
* Grants/Stormwater Fees	$ 650,000	$ 169,167	$ 5,025,311	$ 7,600,000
* Debt	315,210	2,135,833	1,750,000	-
* Stormwater Fees	1,145,430	-	2,477,177	2,095,000
Total	**$ 2,110,640**	**$ 2,305,000**	**$ 9,252,488**	**$ 9,695,000**


N
Madeline Ave
Clyde Morris Blvd
Herbert St
Nova Rd
Dunlawton Ave
Ridgewood Ave
Willow Run Blvd
Spruce Creek Rd
Dunlawton Ave
Nova Rd
Williamson Blvd
95
Taylor Rd
Taylor Rd
Spruce Creek Rd
Ridgewood Ave
Capital Improvement Projects (CIP)
Stormwater
1 Sugar Forest Stormwater & Force Main
2 Cambridge Canal Pump Station Upgrade
3 Sweetwater Blvd Outfall to B19
4 Drainage Pipe R&R (citywide)
5 Proactive Inspection & Maintenance (citywide)
6 Devon St Stormwater Pond Modification
7 Stormwater Master Plan Phase II (citywide)
City Boundary

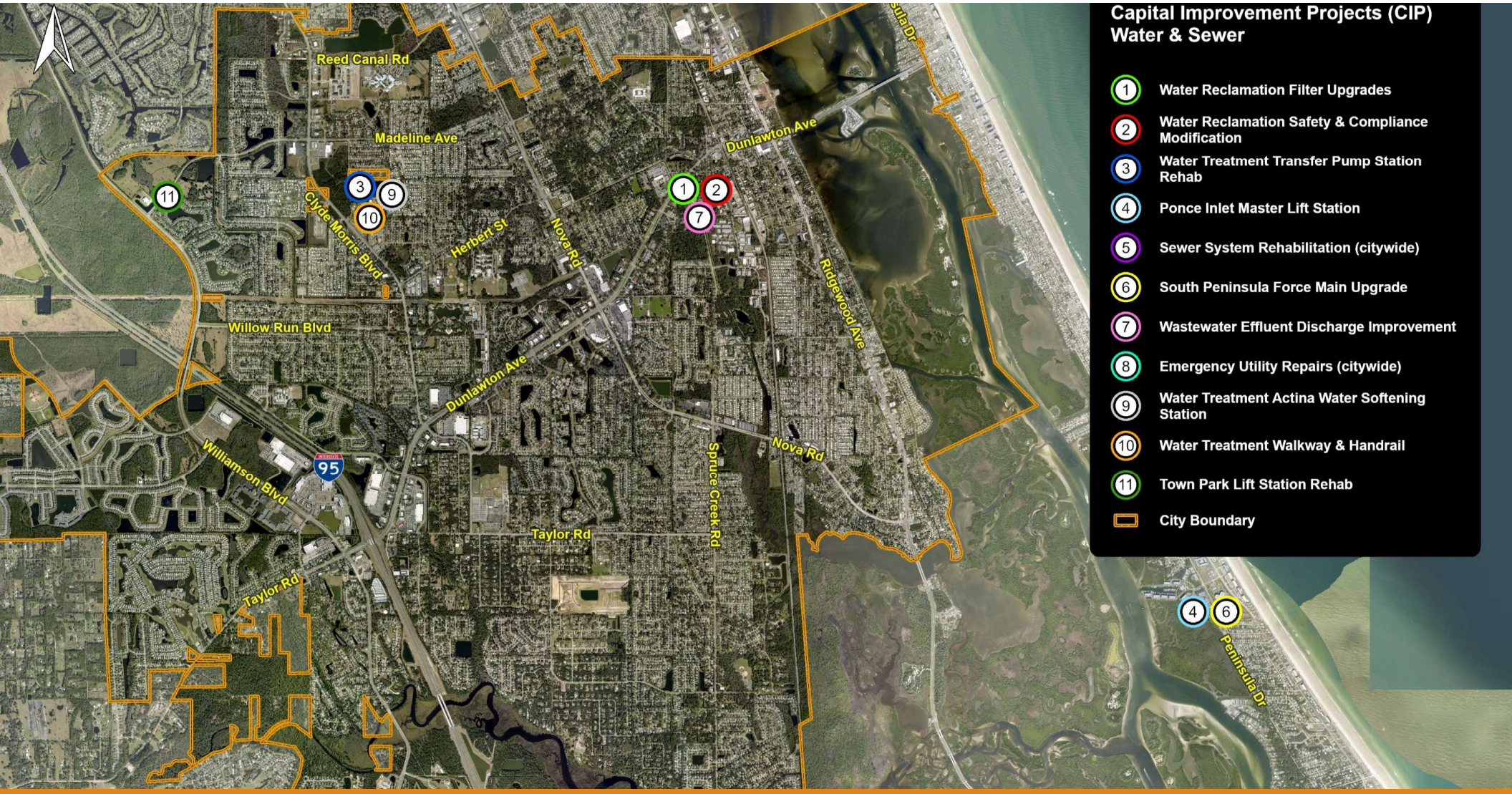
Key Stormwater Projects Future Grants

Project	Total Project Cost	Funding Source	Grant Amount
Sleepy Hollow Drainage Improvements	$ 21,830,000	Transform 386	$ 10,765,000
		Resilient Florida	11,065,000
Pepper Hill/Sugar Forest	17,270,000	Transform 386	7,270,000
		Resilient Florida	4,300,000
		Legislative Appropriation/FDEP Grant	1,400,000
Cambridge Canal Pump Station Upgrades	7,200,000	FEMA 75% Reimbursement/City 25%	5,400,000
Portona Area Drainage Improvements	4,930,000	Transform 386	2,465,000
		Resilient Florida	2,465,000
Powers Ave Property Acquisition and Stormwater Pond	2,370,000	Transform 386	1,185,000
Waste Water Treatment Plant Flood Mitigation	TBD	Resilient Florida	50% of the Contruction Cost
	$ 53,600,000		**$ 46,315,000**

Water & Sewer

	Project	Cost	Stage	Funding Source
1	Water Reclamation Upgrades Phase I	15,150,000	Construction	Grant
2	Water Reclamation Upgrades Phase II	6,000,000	Design	Debt
3	Water Plant Transfer Pump Station Rehab	1,500,000	Design	Water & Sewer Fund Balance
4	Ponce Inlet Master Lift Station	1,500,000	Design/Construction	Water & Sewer Fund Balance
5	Sewer System Rehabilitation	650,000	Construction	Water & Sewer Fund Balance
6	South Peninsula Force Main Upgrade	500,000	Design/Construction	Water & Sewer Fund Balance
7	Wastewater Effluent Discharge Improvement	400,000	Design	Water & Sewer Fund Balance
8	Emergency Utility Repairs	250,000	Annual	Water & Sewer Fund Balance
9	Water Plant Actina Water Softening Solution	250,000	Design	Water & Sewer Fund Balance
10	Water Plant Walkway & Handrail	200,000	Design	Water & Sewer Fund Balance
11	Town Park Lift Station Rehab	150,000	Construction	Water & Sewer Fund Balance
	Total	$ 5,400,000		
	Total Funded By Water Sewer Fund	**$ 26,550,000**		

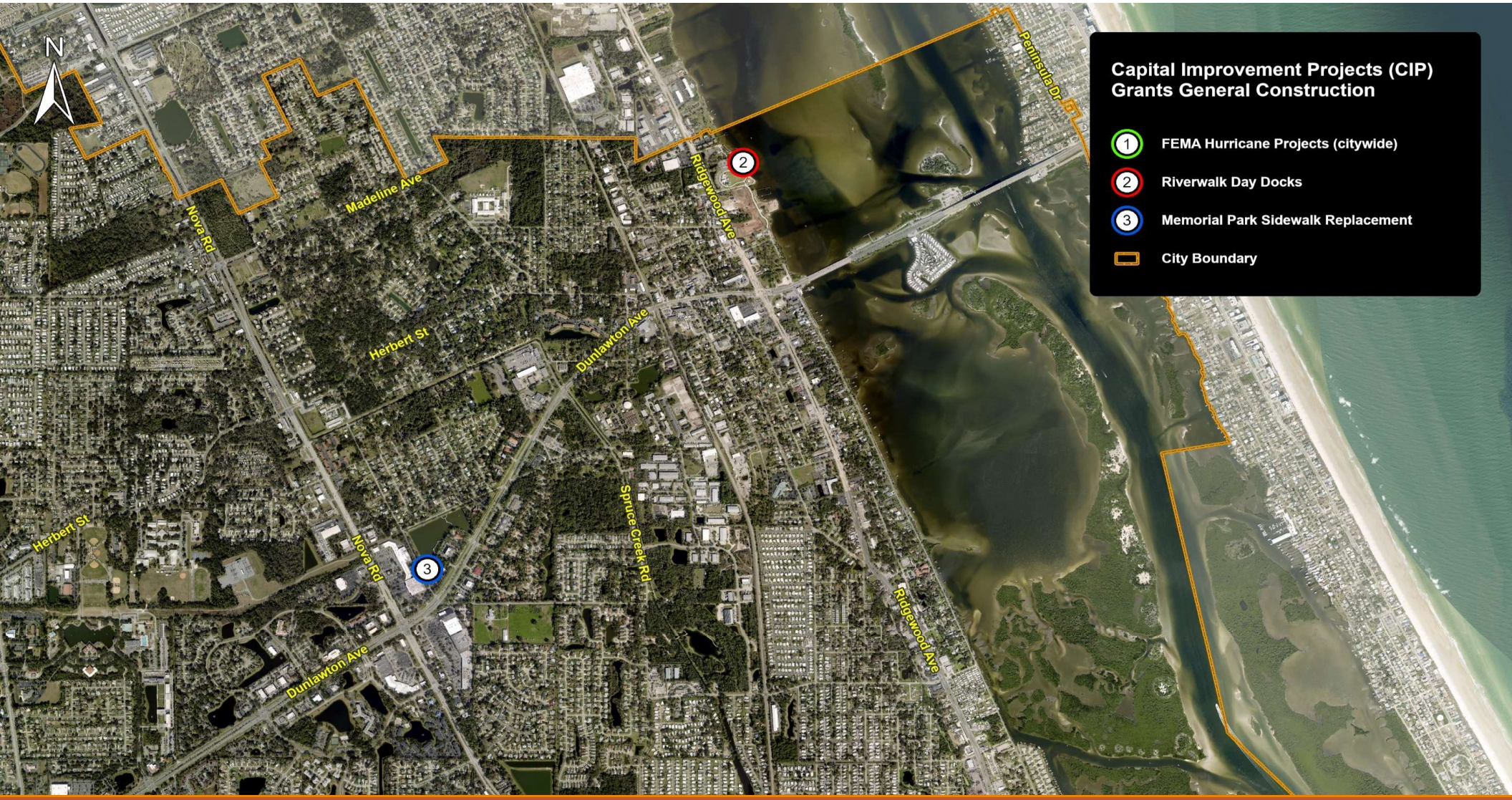
Water & Sewer	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
* Grant	$ 750,000	$ -	$ -	$ 15,150,000
* Debt	11,300,000	-	-	6,000,000
* Fund Balance	3,510,000	20,710,000	5,450,000	5,400,000
Total	**$ 15,560,000**	**$ 20,710,000**	**$ 5,450,000**	**$ 26,550,000**


Capital Improvement Projects (CIP)
Water & Sewer
1 Water Reclamation Filter Upgrades
2 Water Reclamation Safety & Compliance Modification
3 Water Treatment Transfer Pump Station Rehab
4 Ponce Inlet Master Lift Station
5 Sewer System Rehabilitation (citywide)
6 South Peninsula Force Main Upgrade
7 Wastewater Effluent Discharge Improvement
8 Emergency Utility Repairs (citywide)
9 Water Treatment Actina Water Softening Station
10 Water Treatment Walkway & Handrail
11 Town Park Lift Station Rehab
City Boundary
Reed Canal Rd
Madeline Ave
Clyde Morris Blvd
Herbert St
Nova Rd
Dunlawton Ave
Ridgewood Ave
Willow Run Blvd
Williamson Blvd
95
Taylor Rd
Spruce Creek Rd
Peninsula Dr

Grants General Construction

	Project	Cost	Stage	Funding Source
1	FEMA Hurricane Projects:			
	a) Hurricane Ian FEMA Grant	5,083,789	Elevation 13 Homes & 4 Home Reconstruction	Grants/Other
	b) Hurricane Nicole FEMA Grant	5,352,746	Elevation 13 Homes & 1 Home Reconstruction	Grants/Other
	c) Flood Mitigation Assistance FEMA Grant	1,901,772	Elevation 6 Homes	Grants/Other
2	Riverwalk Day Docks	1,620,520	Construction	Grants/Other
3	Memorial Park Sidewalk Replacement	350,000	Construction	Grants/Other
	Total General Construction Funded by Grants/Other	**$ 14,308,827**		

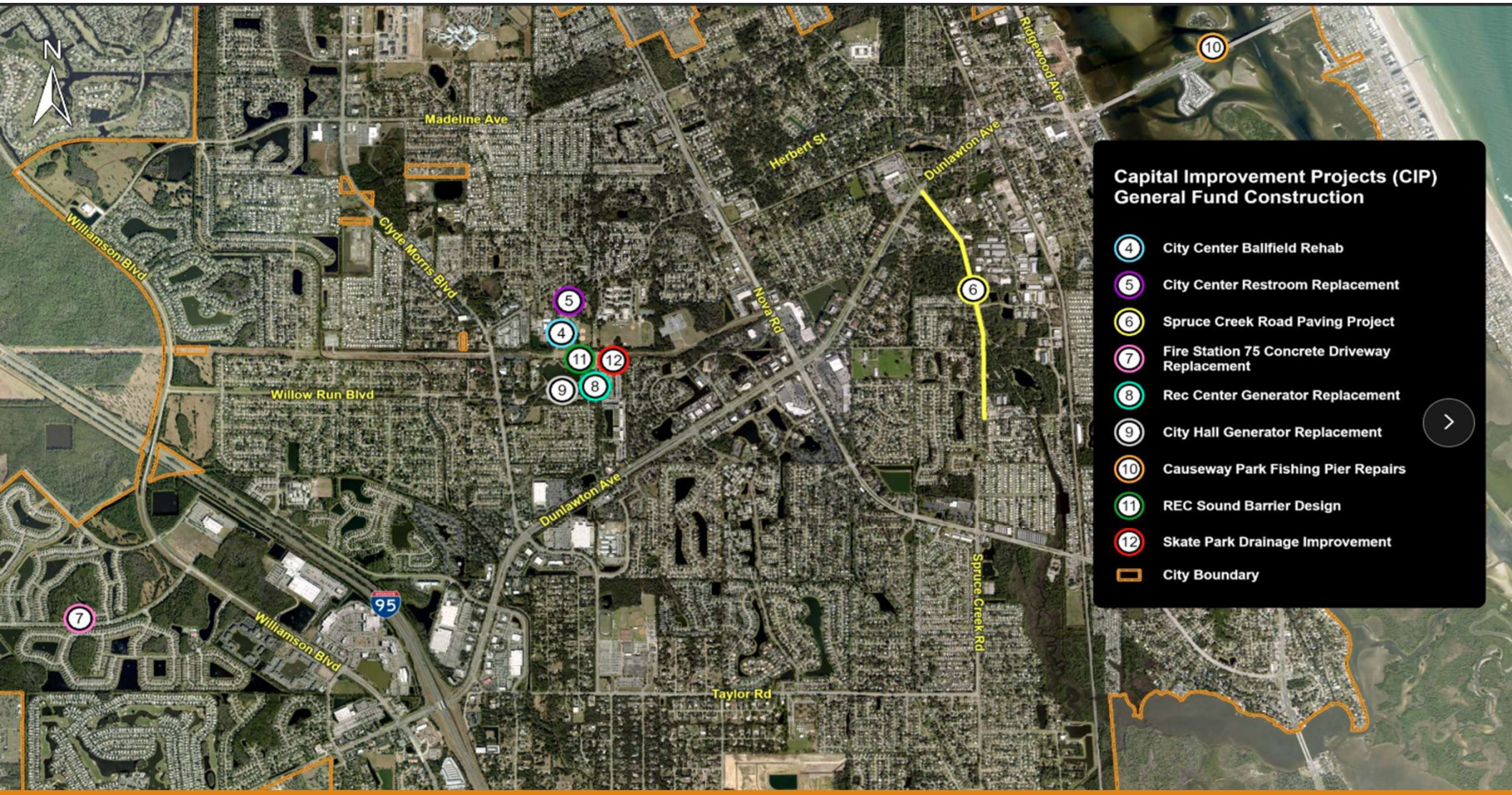
General Construction	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
* Grants/Other	$ 583,834	$ 1,082,525	$ 2,239,164	$ 14,308,827
* General Fund	2,007,263	1,702,085	3,588,700	4,021,000
* Debt	8,000,000	16,100,000	-	-
* Impact Fees	446,000	-	-	-
* Recreation Fund	-	-	-	100,000
* Golf Course Fund	-	458,000	-	150,000
Total	**$ 11,037,097**	**$ 19,342,610**	**$ 5,827,864**	**$ 18,579,827**


N
Capital Improvement Projects (CIP)
Grants General Construction
1 FEMA Hurricane Projects (citywide)
2 Riverwalk Day Docks
3 Memorial Park Sidewalk Replacement
City Boundary
Madeline Ave
Nova Rd
Herbert St
Dunlawton Ave
Ridgewood Ave
Peninsula Dr
Spruce Creek Rd
Herbert St
Nova Rd
Dunlawton Ave
Ridgewood Ave
2
3

General Fund Construction

	Project	Cost	Stage	Funding Source
4	City Center Ballfield Rehab	3,000,000	Construction	General Fund
5	City Center Restroom Replacement	136,000	Design/Construction	General Fund
6	Spruce Creek Road Paving Project	400,000	Construction	General Fund
7	Fire Station 75 Concrete Driveway Repair	175,000	Construction	General Fund
8	Rec Center Generator Replacement	100,000	Design	General Fund
9	City Hall Generator Replacement	80,000	Design	General Fund
10	Causeway Park Fishing Pier Repairs	65,000	Design	General Fund
11	REC Sound Barrier Design	40,000	Design	General Fund
12	Skate Park Drainage Improvement	25,000	Design	General Fund
	Total General Construction Funded by General Fund	**$ 4,021,000**		

General Construction	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
* Grants/Other	$ 583,834	$ 1,082,525	$ 2,239,164	$ 14,308,827
* General Fund	2,007,263	1,702,085	3,588,700	4,021,000
* Debt	8,000,000	16,100,000	-	-
* Impact Fees	446,000	-	-	-
* Recreation Fund	-	-	-	100,000
* Golf Course Fund	-	458,000	-	150,000
Total	**$ 11,037,097**	**$ 19,342,610**	**$ 5,827,864**	**$ 18,579,827**


N
Madeline Ave
Herbert St
Ridgewood Ave
Dunlawton Ave
Williamson Blvd
Clyde Morris Blvd
Nova Rd
Willow Run Blvd
Dunlawton Ave
Spruce Creek Rd
Williamson Blvd
95
Taylor Rd
Capital Improvement Projects (CIP)
General Fund Construction
4 City Center Ballfield Rehab
5 City Center Restroom Replacement
6 Spruce Creek Road Paving Project
7 Fire Station 75 Concrete Driveway Replacement
8 Rec Center Generator Replacement
9 City Hall Generator Replacement
10 Causeway Park Fishing Pier Repairs
11 REC Sound Barrier Design
12 Skate Park Drainage Improvement
City Boundary

Recreation & Golf Course

Project	Cost	Stage	Funding Source
YMCA Improvements	100,000	Construction	Recreation Facilities Fund Balance

Project	Cost	Stage	Funding Source
Course Tee Box Renovations	150,000	Construction	Golf Course

General Construction	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
* Grants/Other	$ 583,834	$ 1,082,525	$ 2,239,164	$ 14,308,827
* General Fund	2,007,263	1,702,085	3,588,700	4,021,000
* Debt	8,000,000	16,100,000	-	-
* Impact Fees	446,000	-	-	-
* Recreation Fund	-	-	-	100,000
* Golf Course Fund	-	458,000	-	150,000
Total	**$ 11,037,097**	**$ 19,342,610**	**$ 5,827,864**	**$ 18,579,827**

Capital Outlay

Capital Requests

Parks & Recreation	Cost
• Dugouts at Spruce Creek Park	70,000
• Replace Pavilions at Causeway Park	119,000
• Cameras for Riverwalk Park	45,000
• Replace Wall Partitions at Adult Activity Center	55,000
• Panic Buttons for REC	10,000
• Cameras for Adult Activity Center	15,000
• Audio/Video for Lakeside	10,000
Total Funded by General Fund	**$ 349,000**

	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
General Fund	$ 376,809	$ 829,600	$ 233,546	$ 349,000

Capital Requests

Golf Course

• Artificial Tee Line	80,000
• Cart Barn Roof and Remodel	115,000
• Grinders	105,000
	$ 300,000

Information Technology

• Routine Replace Computers and Other Hardware	250,000
	$ 250,000

Water & Sewer

• Bypass Pump - Sewer Plant	70,000
• HDPE Pipe Fusion System	25,000
• Polymer Skid Pumps	125,000
• 80 Lift Station Remote Telemetry Units	1,500,000
• Storage Awning - Sewer Plant	35,000
• Ammonia Tanks Replacement	50,000
• Flow Meter Upgrade	50,000
• 43 Remote Telemetry Units Upgrades Water Production	1,000,000
• Water Analyzer Replacements	200,000
	$ 3,055,000

	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
Golf Course	$ 125,620	$ -	$ 162,000	$ 300,000
Information Technology	60,000	700,000	350,000	250,000
Water & Sewer	-	354,000	-	3,055,000
Stormwater	-	10,000	-	-
Forestry	149,000	230,000	-	-
Recreation Fund	-	-	41,100	-
Total Capital	**$ 334,620**	**$ 1,294,000**	**$ 553,100**	**$ 3,605,000**

Fleet Replacement

Fleet Replacement

General Fund			
Community Development	1 - Lifted Pickup Truck		70,000
		$	**70,000**
Code Enforcement	2 - Pickup Trucks		80,000
		$	**80,000**
Engineering	2 - Pickup Trucks		100,000
		$	**100,000**
Fire Services	1 - Pickup Truck		55,000
	1 - Transit Cargo Van		41,000
	1 - Fire Engine - Brush Truck		325,000
	1 - Fire Engine - Ladder Truck		2,100,000
	2 - Fire Engine - Pumpers		3,000,000
	1 - Rescue Unit		450,000
		$	**5,971,000**
Parks & Recreation	3 - Trailers		18,000
	1 - ATV		15,000
	2 - Vans		125,000
	2 - Pickup Trucks		95,000
	3 - Utility Trucks		225,000
	1 - Backhoe Loader		83,000
		$	**561,000**

Fleet Replacement cont.

General Fund(Continued)		
Police	1 - SWAT Van	150,000
	1 - SUV	50,000
	4 - Pickup Trucks	193,000
	1 - Truck for Animal Control	95,000
	9 - Motorcycles	252,000
	11 - Interceptor SUVs	780,000
	1 - Toyota Camry (Detective)	36,500
	1 - Axon Body Cams, Tasers & Digital Evidence Mgmt Software (Yr 1 of 5)	428,932
		$ 1,985,432
Public Works	2 - Pickup Trucks	150,000
	1 - Trailer	20,000
	2 - Light Towers	20,000
	4 - Message Boards	120,000
		$ 310,000
General Fund Total		**$ 9,077,432**

Fleet Replacement cont.

Building Fund		
	2 - Lifted Pickup Trucks	140,000
		$ 140,000
Water & Sewer Fund		
	2 - Trailer	30,000
	2 - SUVs	90,000
	3 - Pickup Trucks	115,000
	1 - Dump Trailer	90,000
	1 - Camera Truck to Inspect Utility Infrastructure	405,000
	1 - Mini Excavator	85,000
	1 - Valve Exercising Machine	75,000
	1 - Forklift	50,000
	5 - Utility Trucks	450,000
		$ 1,390,000

Fleet Replacement cont.

Stormwater		
	1 - Pickup Truck	60,000
	1 - Utility Truck	74,000
	1 - ATV	16,000
	1 - Trailer	35,000
	1 - Dump Truck	75,000
	1 - Mini Excavator	85,000
	1 - Backhoe Loader	100,000
	3 - Pumps	500,000
	1 - Excavator	375,000
	1 - Vac-Con Truck	475,000
	$	**1,795,000**

Fleet Replacement cont.

Golf Course Fund		
	72 - Golf Carts	400,000
	4 - Mowers	187,000
	1 - Tractor	65,000
	$	**652,000**
Vehicle Maintenance Fund		
	1 - Pickup Truck	65,000
	1 - SUV	40,000
	1 - ATV	15,000
	1 - Trailer	9,000
	$	**129,000**
Fleet Replacement Total	**$**	**13,183,432**

General Fund	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
*Fleet	$ 1,173,900	$ 2,422,800	$ 2,435,031	$ 3,202,432
*Firetrucks/Transport	1,400,000	1,200,000	1,500,000	5,875,000
Total	**$ 2,573,900**	**$ 3,622,800**	**$ 3,935,031**	**$ 9,077,432**

	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
Building	$ -	$ -	$ -	$ 140,000
Water & Sewer	586,000	490,000	621,000	1,390,000
Solid Waste	30,000	-	750,000	-
Stormwater	699,500	645,000	137,000	1,795,000
Golf Course	96,000	90,000	75,000	652,000
Information Technology	85,000	-	45,000	-
Vehicle Maintenance	-	-	-	129,000
Total	**$ 1,496,500**	**$ 1,225,000**	**$ 1,628,000**	**$ 4,106,000**

Total Fleet	**$ 4,070,400**	**$ 4,847,800**	**$ 5,563,031**	**$ 13,183,432**

Key Drivers for FY26 Change:

General Fund: Fire Trucks (3) $5,100,000

Water & Sewer: Camera Truck to Inspect Utility Infrastructure (1) $405,000, Utility Trucks (5) $450,000

Stormwater: Vac-Con Truck (1) $475,000, Pumps (3) $500,000

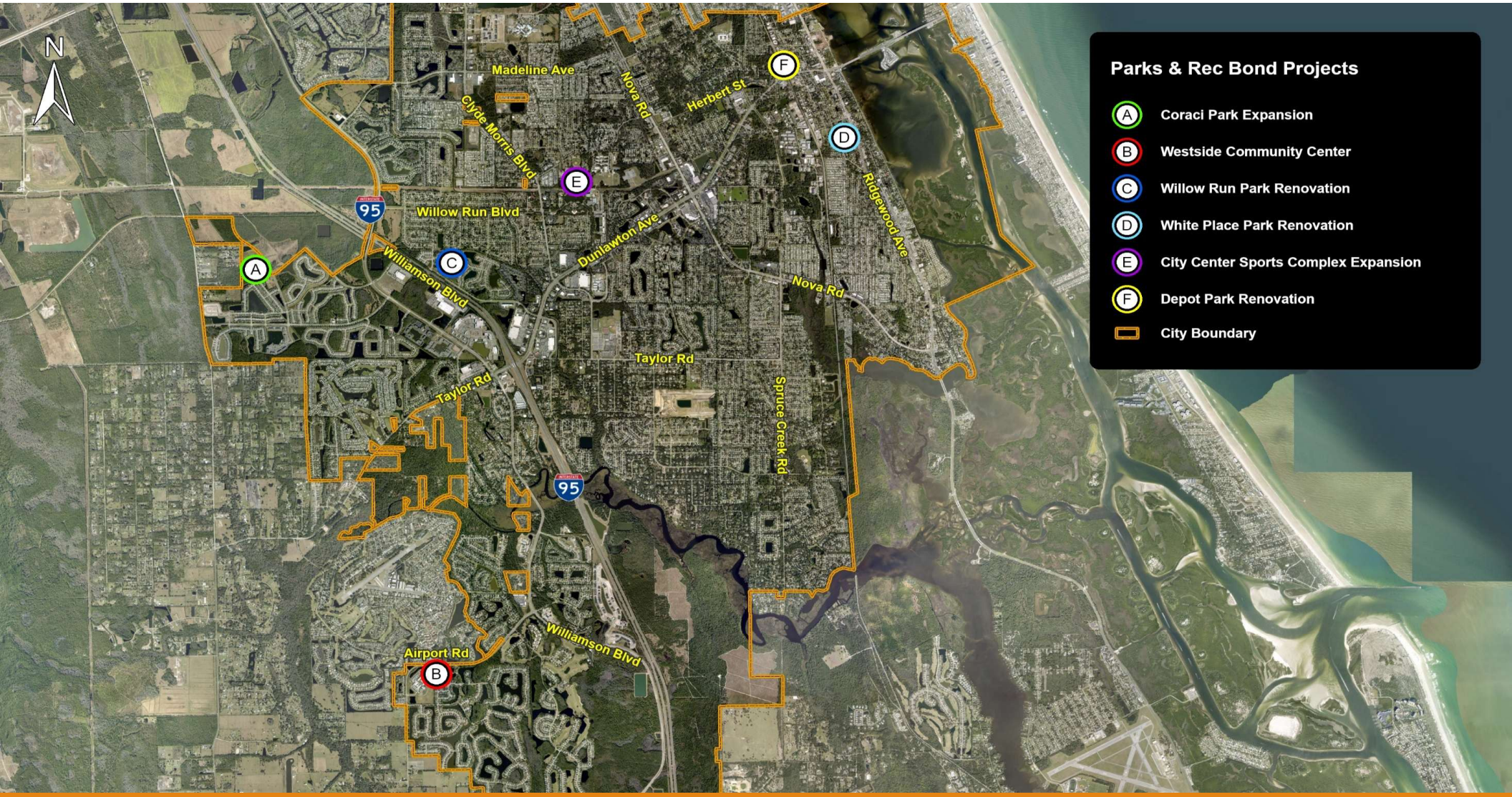
Annual Maintenance

Description	Cost	Funding Source
Annual Sidewalk Maintenance	515,000	Local Option Gas Tax
Annual Paving	800,000	Local Option Gas Tax
Total	**$ 1,315,000**	

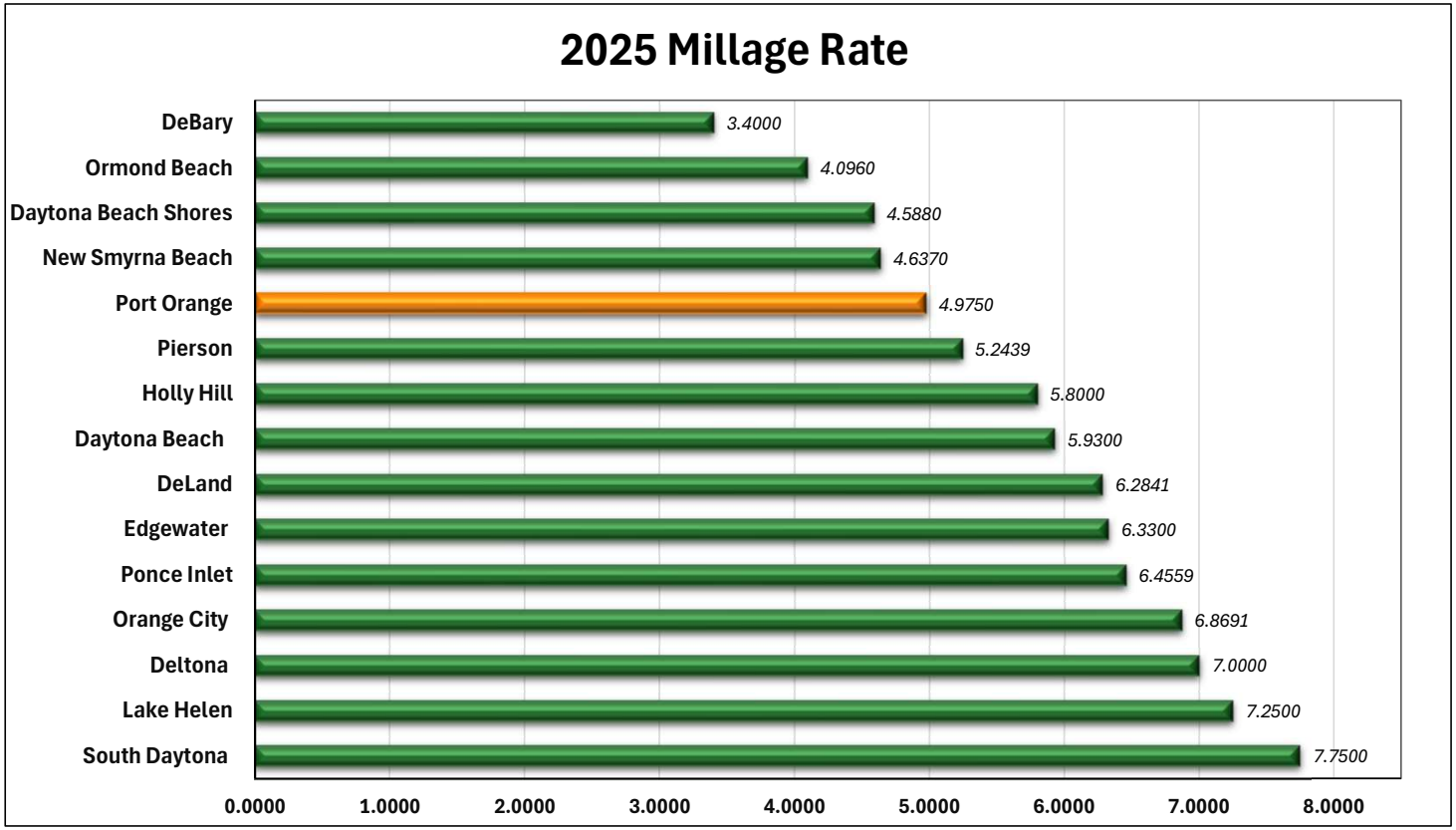
	Adopted FY23	Adopted FY24	Adopted FY25	Requested FY26
Paving/Sidewalks	$ 2,050,000	$ 1,050,000	$ 1,151,804	$ 1,315,000

Parks & Rec Bond Projects

	Project	FY25	FY26	Future Years	Total Cost
A	Coraci Park Expansion	$ -	$ 600,000	$ 11,400,000	$ 12,000,000
B	Westside Community Center	-	400,000	10,600,000	11,000,000
C	Willow Run Park Renovation	850,000	650,000	-	1,500,000
D	White Place Park Renovation	500,000	1,500,000	-	2,000,000
E	City Center Sports Complex Expansion	200,000	1,300,000	-	1,500,000
F	Depot Park Renovation	9,000	200,000	791,000	1,000,000
G	Trail System Enhancements	-	-	1,000,000	1,000,000
	Total	**$ 1,559,000**	**$ 4,650,000**	**$ 23,791,000**	**$ 30,000,000**


N
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Spruce Creek Rd
Airport Rd
Williamson Blvd
95
95
A
B
C
D
E
F
Parks & Rec Bond Projects
A Coraci Park Expansion
B Westside Community Center
C Willow Run Park Renovation
D White Place Park Renovation
E City Center Sports Complex Expansion
F Depot Park Renovation
City Boundary

City Millage Comparisons



Next Steps

- **Budget Workshops & Actions Tentative Dates**
  - Revenue Projections, Operating, & Capital Projects – July 15 – 5:30 p.m.
  - Set Maximum Millage – July 15
  - Optional Meeting – Set Maximum Millage – July 22

- **Public Hearings**
  - Wednesday September 3 – 5:30 p.m.
  - Wednesday September 17 – 5:30 p.m.