



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

APRIL 7, 2026

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. Regular City Council Meeting - March 17, 2026
6. Bid Awards and Contract Items
 - a. Approval of Change Order No. 1 to the Masci General Contractor, Inc. Contract for the St. John's River to Sea Loop Shared-Use Nonmotorized (SUN) Trail Project
 - b. Approval of Contract with GSM Engineered Fabric, LLC for Belt Filter Press Repairs at the Water Reclamation Facility in the amount of \$27,934.00
 - c. Approval of Amendment No. 1 to the J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing Contract for Wrecker Services
7. Resolution No. 26-18 - Approval of State of Florida Department of Environmental Protection Grant Agreement in the amount of \$3,000,000 for the Madeline Ave./Pepperhill Stormwater Pond and Pump Station
8. Resolution No. 26-19 - Tow Rates for Wrecker Service Agreement
9. Approval of a Utility Easement to the City of Daytona Beach Shores on a portion of 2844 Ridge Road for Upgrades to the Force Main

C. RECOGNITION AND PROCLAMATIONS

10. FCCMA Recognition for being a Council-Manager City for 55 years

11. Water Conservation Month

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

E. COMMENTS AND ADDITIONAL ITEMS

12. Council Members

13. City Attorney

14. City Manager

a. Riverwalk Update

b. Stormwater Projects Update

c. Parks and Recreation Bond Projects Update

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

15. Appoint a new Volusia Flagler TPO member

G. PUBLIC HEARING

16. Second Reading - Ordinance No. 2026-4 - LDC Amendment/Chapters 2 and 16 - Outdoor Donation Bins & Temporary Storage Containers (Case No. DCAM-2026-0001)

17. Second Reading - Ordinance No. 2026-5 - LDC Amendment/Chapters 2, 14, and 15 - Measurement to Determine Paint Color & Paint Requirements for Murals (Case No. DCAM-2026-0001)

H. REGULAR AGENDA

18. FY2025 Audit Discussion with James Moore & Company

I. COUNCIL COMMITTEE REPORTS

19. City Council Committee Reports

a. Volusia Flagler TPO - Councilman Jonathan Foley

b. General Employee's Pension - Mayor Scott Stiltner

J. ADJOURNMENT



Regular City Council Meeting

4/7/2026

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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
MARCH 17, 2026

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

Silent Invocation

Pledge of Allegiance

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

4. Public Comments on Consent Agenda Items Only

Robert Reinhagen, resident, commented on Consent Agenda item #11 for the BIK Economic Incentive Agreement related to the tortoise relocation and expressed his concerns on an additional incentive.

CONSENT AGENDA

5. Approval of Minutes

a. Regular City Council Meeting - March 3, 2026

6. Resolution No. 26-14 - Approval of a Florida Department of Transportation (FDOT) Locally Funded Agreement for Madeline Ave. at Nova Road (SR5A) Intersection and South Swallow Tail Drive at Dunlawton Avenue (SR 421) Intersection Improvements - Port Orange Project CD251

7. Resolution No. 26-16 - Adopting the 2025 Volusia Multi-Jurisdictional Program for Public Information

8. Approval of the Contract to Purchase 798 Sugar House Drive

9. Approval of the First Amendment to the Option to Purchase Contract for 842 Bears Trail

10. Authorization for County of Volusia, Mosquito Control Division to perform low-level flights to provide aerial mosquito control services

11. Approval of the First Amendment to the BIK Economic Incentive Agreement Pursuant to the Eastport CRA Redevelopment Plan & Land Development Code (LDC)

Motion to remove Item #11 from the Consent agenda was made by Councilman Lance Green and Seconded by Councilman Jonathan Foley. Motion carried unanimously by voice vote.

Motion to approve consent agenda items #5-10 was made by Councilman Lance Green and Seconded by Councilman Jonathan Foley. Motion carried unanimously by roll call vote.

Councilman Lance Green advised he has a conflict with item #11 on the consent agenda and therefore will need to abstain from voting on this item. His employer is doing the construction for this project.

Councilman Jonathan Foley asked for clarification of the incentive amount and City Manager Wayne Clark provided further details.

Motion to approve Consent Agenda item #11 was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Shawn Goepfert. Motion carried 4-0-1 by roll call vote with Councilman Lance Green abstaining.

City Council recessed at 6:34 p.m. to hold the Port Orange Town Center CRA and Eastport Business Center CRA meetings, minutes of which are under separate cover.

TOWN CENTER CRA REGULAR MEETING

EASTPORT BUSINESS CENTER CRA REGULAR MEETING

Council reconvened at 6:41 p.m. to hold the regular City Council meeting.

RECOGNITION AND PROCLAMATIONS

12. Vietnam War Veterans Day

Mayor Scott Stiltner read the proclamation recognizing Vietnam War Veterans Day.

13. Sunshine Week

Mayor Stiltner read the proclamation recognizing Sunshine Week.

Dan Morris, representing the Port Orange South Daytona Chamber of Commerce, thanked Council for their continued support of the Chamber and also to represent his new business, Pet Evolution. Mr. Morris commended the Community Development Department for their smooth process and great customer service. Mr. Morris's business mission is to give pets a better life.

COMMENTS AND ADDITIONAL ITEMS

14. Council Members

Mayor Scott Stiltner commended the Parks and Recreation Department for a job well done in hosting the Little League baseball tournament. He requested consensus from the Council to include a subsection under the "Comments and Additional Items" section of the agenda, specifically within the City Manager's portion, dedicated to stormwater mitigation projects to ensure these remain a priority for the City Council. Additionally, he requested regular updates on Parks and Recreation bond projects, noting the importance of keeping the public informed since these projects are publicly funded, as well as updates on the Riverwalk project. Council members verbally agreed to include these items on future agendas.

Mayor Scott Stiltner expressed his pride in the City's Police and Fire Departments, along with surrounding law enforcement agencies, for their hard work and dedication in apprehending criminals during these unusual and stressful events of the past few days. He reported that the South Daytona police officer who was shot twice earlier in the week is recovering well and is expected to make a full recovery. Lastly, he commented on a recent interview with Sheriff Chitwood and reaffirmed that law enforcement has the full support of the City Council.

Councilman Jonathan Foley and Vice Mayor Tracy Grubbs expressed gratitude for the safety of the officers and extended their thoughts and prayers to all law enforcement officers and first responders.

Vice Mayor Tracy Grubbs emphasized the importance of providing project updates to keep the public informed, specifically highlighting the Cambridge project. He also thanked the Parks and Recreation Department for installing additional signage at the boat ramps and expressed appreciation to Mr. Morris of Pet Evolution for partnering with ArtHaus to create a mural on the side of his business, noting that proceeds from the mural will support the Down Under project mural.

Councilman Shawn Goepfert addressed the recent criminal activity, expressing pride in the Police and Fire Department personnel. He advocated for pursuing legislation aimed at keeping repeat offenders in jail, noting that many of the recent crimes involved individuals with prior offenses. He expressed interest in exploring what actions the City can take to support such efforts within legislation. Additionally, he inquired whether the City Manager's weekly newsletter is distributed to the public, recognizing its value as an

informational resource. Mr. Clark confirmed that the newsletter is sent to all residents with a water account.

Councilman Lance Green commended the Parks and Recreation Department for a successful baseball opening day event. He also expressed gratitude that law enforcement officers remained safe during the recent incidents and emphasized the need for a direct non-emergency phone line within the City of Port Orange.

15. City Attorney

There was nothing further.

16. City Manager

Mr. Clark emphasized that the City's top priority remains public safety and expressed pride in the Police and Fire Department personnel, describing them as a strong and dedicated group. As requested, he provided an update on ongoing stormwater mitigation efforts, including the Cambridge Canal, Sugar Forest Drainage, and Transform 386 projects (Portona and Powers Avenue). He also reported that the City has deployed four street sweepers to address the significant accumulation of leaves, noting that recent rainfall has exacerbated the issue by clogging streets and storm drains, and that crews are actively working to resolve it.

Mr. Clark further updated Council on Parks bond projects, stating that final design plans for the City Center expansion have been completed, with construction anticipated to begin within the next few months. Regarding the Riverwalk property, he shared that the City has received multiple inquiries from interested parties; however, staff has clearly communicated the City's vision for a mixed-use development rather than solely residential apartments.

Mayor Scott Stiltner thanked Mr. Clark for maintaining alignment with the City's vision in discussions with real estate representatives.

Councilman Lance Green inquired whether the City had re-engaged previously interested companies prior to Bristol. Mr. Clark responded that one prior party had expressed interest but was not prepared to move forward with development at this time, as they preferred to hold the property while completing other projects currently underway.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

17. Citizen Advisory Committee for TPO

Bobby Ball, CAC for the TPO, provided an update to include his reappointment with the TIP sub-committee, which will help keep the City's projects prioritized.

PUBLIC HEARING

Items No. 18 and 19 were opened together.

Matt Jones, City Attorney read Ordinance No. 2026-2.

ORDINANCE NO. 2026-2

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING THE FUTURE LAND USE (FLU) DESIGNATION FOR APPROXIMATELY ±56.53 ACRES, CONSISTING OF +52.96 ACRES FROM VOLUSIA COUNTY AGRICULTURE RESOURCE (1 UNIT/10 ACRES) AND ±3.57 ACRES FROM VOLUSIA COUNTY URBAN LOW INTENSITY (0-4 UNITS/ACRE), TO CITY OF PORT ORANGE RURAL TRANSITION (0-2UNITS/ACRE) FOR PROPERTY GENERALLY LOCATED NORTH OF CHARLES STREET AND WEST OF AIRPORT ROAD; AUTHORIZE TRANSMITTAL TO REQUIRED AGENCIES; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2026-2
was made by Vice Mayor Tracy Grubbs
and Seconded by Councilman Shawn
Goepfert.

Penelope Cruz, Planning Manager, introduced the items, provided details to include a PowerPoint presentation, and answered Council members' questions.

Mrs. Cruz advised there is an option to include a text amendment policy specific for this property only that states that the gross density is capped at 1 unit/acre. Councilman Foley asked if the policy addition can be done tonight which Ms. Cruz referred to legal counsel.

Joey Posey, attorney for the applicant, provided further details, presented a PowerPoint presentation, and answered council members' questions.

Mr. Posey advised that they are willing to stipulate to the policy addition to the ordinance mentioned by Ms. Cruz. Matt Jones, City Attorney advised this would be an amendment in the Comprehensive Plan and any future changes would have to come before Council for approval.

Council members expressed their concerns, asking several questions on the details of the project to which Ms. Cruz answered.

Father Lopez, Volusia County resident, advised the Spruce Creek Water Basin report is not due until April or June and addressed and advised waiting until the report is done before voting. Lastly, he inquired about Planning Commission member, Stan Schmidt's prior abstention and questioned why he did not abstain this time.

Mr. Jones explained that he received a written statement from Mr. Schmidt that he no longer is the accountant for Mr. Paytas and therefore no longer has a conflict. He further commented that Florida law requires all members to vote when there is no conflict.

Mayor Scott Stiltner asked how the City would make the policy addition to the ordinance. Ms. Cruz explained the process to complete this text amendment addition.

Mr. Jones stated if Council's direction is to require the policy addition to the ordinance, he recommends they withdraw the motion and second and start over.

Councilman Jonathan Foley commended the developer for agreeing to going above and beyond to do their homework and speaking with the Volusia County residents and HOA's.

Vice Mayor Tracy Grubbs withdrew his motion to approve Ordinance No. 2026-2 and Councilman Shawn Goepfert withdrew his second.

Motion to approve Ordinance 2026-2 with the addition of a policy limiting the subject property to a gross density of one unit per acre was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Shawn Goepfert. Motion carried unanimously by roll call vote.

19. First Reading - Ordinance No. 2026-3 - Conventional Rezoning/Case No. REZONING-26-0001

Mr. Jones read Ordinance No. 2026-3.

ORDINANCE NO. 2026-3

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING OF APPROXIMATELY ±56.53 ACRES, CONSISTING OF ±52.96 ACRES FROM VOLUSIA COUNTY A-1 (PRIME AGRICULTURE) AND ±3.57 ACRES FROM VOLUSIA COUNTY A-2 (RURAL AGRICULTURE), TO CITY OF PORT ORANGE R-20SF SINGLE FAMILY RESIDENTIAL FOR PROPERTY GENERALLY LOCATED NORTH OF CHARLES STREET AND WEST OF AIRPORT ROAD; AUTHORIZING

REVISION OF THE OFFICIAL ZONING ATLAS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2026-3 was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Shawn Goepfert. Motion carried unanimously by roll call vote.

20. First Reading - Ordinance No. 2026-4 - LDC Amendment/Chapters 2 and 16 - Outdoor Donation Bins & Temporary Storage Containers (Case No. DCAM-2026-0001)

Mr. Jones read Ordinance No. 2026-4.

ORDINANCE NO. 2026-4

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 2 DEFINITIONS AND INTERPRETATIONS AND CHAPTER 16 MISCELLANEOUS REGULATIONS, RELATING TO OUTSIDE STORAGE, ESTABLISHING STANDARDS FOR OUTDOOR DONATION BINS, AND ESTABLISHING STANDARDS FOR TEMPORARY STORAGE CONTAINERS ON NON-RESIDENTIAL PROPERTIES ASSOCIATED WITH CONSTRUCTION AND RENOVATION PROJECTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2026-4 was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Shawn Goepfert.

Mrs. Cruz introduced the item, provided details to include a PowerPoint presentation, and answered Council members' questions.

Mr. Reinhausen believes the item needs to be dropped as he believes what happens with the bins should be between the owner and the business.

Shirley Rice, resident, asked if this ordinance would apply to non-residential properties as well or just commercial, noting PODS as an example.

Mrs. Cruz advised this code is for non-residential properties. There is an existing code that references PODS that also has flexible language to allow for use during projects that may not specifically require a permit.

Councilman Jonathan Foley confirmed that the small individually owned neighborhood public libraries on residents' properties are not affected by this ordinance. Mrs. Cruz confirmed the public libraries he is referring to are not affected by this code.

Motion carried unanimously by roll call vote.

21. First Reading - Ordinance No. 2026-5 - LDC Amendment/Chapters 2, 14, and 15 - Measurement to Determine Paint Color & Paint Requirements for Murals (Case No. DCAM-2026-0001)

Mr. Jones read Ordinance No. 2026-5.

ORDINANCE NO. 2026-5

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 2 DEFINITIONS AND INTERPRETATIONS, CHAPTER 14 ARCHITECTURAL DESIGN, AND CHAPTER 15 SIGNS, RELATING TO DESIGN CRITERIA, UPDATING THE METHOD FOR DETERMINING WHETHER A COLOR QUALIFIES AS AN EARTH TONE OR PASTEL TO ALIGN WITH CURRENT PAINT INDUSTRY STANDARDS; RELATING TO PERMANENT SIGN TYPES, SPECIFICALLY MURALS, CLARIFYING THAT MURALS ARE EXCLUDED FROM PAINT REGULATIONS, EXCEPT THAT REFLECTIVE AND FLUORESCENT PAINTS REMAIN PROHIBITED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Lance Green.

Mrs. Cruz introduced the item, provided details to include a PowerPoint presentation and answered Council members' questions.

Motion carried unanimously by roll call vote.

COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports

a. First Step Shelter - Councilman Shawn Goepfert

Councilman Shawn Goepfert provided an update on the First Step Shelter.

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

Councilman Shawn Goepfert provided an update on the Port Orange South Daytona Chamber of Commerce. Mayor Scott Stiltner thanked Councilman Goepfert for staying well connected with the Chamber.

c. ArtHaus - Vice Mayor Tracy Grubbs

Vice Mayor Tracy Grubbs provided an update on ArtHaus.

d. Roundtable of Elected Officials - Mayor Scott Stiltner

Mr. Clark provided an update on the Roundtable of Elected Officials as Mayor Scott Stiltner was unable to attend.

ADJOURNMENT - 8:20 p.m.

Mayor Scott Stiltner

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B6a) Approval of Change Order No. 1 to the Masci General Contractor, Inc. Contract for the St. John's River to Sea Loop Shared-Use Nonmotorized (SUN) Trail Project

DEPARTMENT: Community Development

GOAL: 1 - Public Safety

2 - Infrastructure

3 - Quality of Life

RECOMMENDED MOTION: Move to approve Change Order No. 1 to the Masci General Contractor, Inc. contract for the St. John's River to Sea Loop Shared-Use Nonmotorized (SUN) Trail Project for an additional amount not to exceed \$37,731.77, with a revised total amount of \$1,671,593.42; and authorizing the Mayor and City Clerk to execute all required documents.

SUMMARY: Community Development staff is requesting approval of Change Order No. 1 to the construction contract ITB #25-13 awarded to Masci General Contractor, Inc., for the construction of the St. John's River to Sea (SJR2C) Loop Shared-Use Nonmotorized (SUN) Trail Project (FDOT #439865)(City of Port Orange Project #CD221). The change order includes modifications to the project amounting to \$37,731.77, or 2.3% of the contract total. It also provides a 9-day extension to the construction schedule for the specified work, plus 8 additional days for holidays recognized under the FDOT and City calendars, for a total of 17 days.

Kimley-Horn, the City's construction and engineering inspection firm, and the Engineer of Record, Stanley Consultants, have verified the validity of the work, material quantities, and unit costs. A summary of the required changes and associated costs is as follows:

1. Adjustments to the shared-use path layout are required at the connection to the existing sidewalk along Dunlawton Avenue/SR 421 to avoid conflicts with existing underground utilities that were installed after the project's design plans were completed in March 2024. \$1,390.63
2. Revisions to the shared-use path layout to improve the durability of the ADA approaches at Powers Avenue and installation of a required handrail/guiderail. \$3,333.39
3. Revisions to stormwater piping and connections to an existing structure to avoid conflicts with unknown/unmarked FPL conduits in order to maintain functionality of the stormwater system. \$9,494.15

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4. Adjustment to the contract timeframe of 4 days for Items #1 - #3.
 5. Remove and dispose of an existing tree that was damaged by a storm event and fell into the Halifax Canal. \$1,530.00.
 6. Remove and dispose of an existing tree to provide adequate clearances from the trail boundary. \$1,530.00.
 7. Removal and replacement of an existing 8' wide concrete shared-use path in the City's Spruce Creek Road right-of-way from Selin Circle to south of Oak Street. This approximately 180' length of shared-use path was originally specified as "to remain", but continued deterioration, heavy service vehicles, and tree roots have severely damaged the concrete since completion of the plans. To maintain FDOT SUN Trail standards, the shared-use path segment should be replaced.
\$20,453.60
 8. Adjustment to the contract timeframe of 5 days for Item #7.

In the approval of the contract award on August 19, 2025, the City Council approved \$80,000 as contingency funds to address unforeseen conditions. Upon execution of Change Order No. 1, the new contract total will be \$1,671,593.42, and the balance of contingency funds will be \$42,268.23. The adjusted final completion date for the project will be July 27, 2026. However, the contractor is anticipated to complete the project ahead of schedule, and the additional time is unlikely to be needed.

Staff has had preliminary conversations with FDOT regarding probable eligibility for reimbursement of the items included in this change order and is preparing final documentation for submittal to FDOT/SUN Trail for their review. Funding for this change order appears to be available from the remaining balance of the project's budgeted State grant funds.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Masci General Contractor, Inc. - Change Order No. 1 to EJCDC for SJR2C Loop SUN Trail 439865	Masci General Contractor, Inc. - Change Order No. 1 to EJCDC for SJR2C Loop SUN Trail 439865.pdf
2.	EXECUTED Masci General Contractor, Inc. EJCDC Agreement ITB 25-13 SJR2C Loop Trail Project Spruce Creek Rd from South of Selin Cir to Herbert St	EXECUTED Masci General Contractor, Inc. EJCDC Agreement ITB 25-13 SJR2C Loop Trail Project Spruce Creek Rd from South of Selin Cir to Herbert St.pdf
3.	Amendment No. 1 to EJCDC Masci General Contractor, Inc.	Amendment No. 1 to EJCDC Masci General Contractor, Inc..pdf
4.	Notice to Proceed 10-1-25 (002)	Notice to Proceed 10-1-25 (002).pdf
5.	439865 Change Order No 1 CEI Change Order Review Letter -R1	439865 Change Order No 1 CEI Change Order Review Letter -R1.pdf
6.	439865 Change Order No 2CEI Change Order Review Letter - R1	439865 Change Order No 2CEI Change Order Review Letter - R1.pdf
7.	Masci Change Order 002- 8W 4 inch	Masci Change Order 002- 8W 4 inch

8.	thick concrete sidewalk - Selin cir- R1 439865 Change Order No 1 Backup Documentation - Contractor CO Proposals and RFI Responses	thick concrete sidewalk - Selin cir- R1.pdf 439865 Change Order No 1 Backup Documentation - Contractor CO Proposals and RFI Responses.pdf
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Lisa Epstein	Created/Initiated - 03/18/2026
Tim Burman	Approved - 03/19/2026
Sue Wang	Approved - 03/20/2026
Shannon Balmer	Approved - 03/25/2026
Wayne Clark	Final Approval - 03/25/2026

CHANGE ORDER NO. 1
To EJCDC Agreement dated August 19, 2025
MASCI GENERAL CONTRACTOR, INC., Contractor

Project: ITB 25-13 SJR2C Loop SUN Trail
FPN 439865-3-54-01
Project Number CD221

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE: Original Contract Price: \$1,633,861.65	CHANGE IN CONTRACT TIMES: Original Contract Times (Notice to Proceed Issued October 13, 2025) Substantial Completion: June 16, 2026 (246 days) Final Completion: July 10, 2026 (270 days)
Net changes from previous Change Orders: \$0	Changes in contract time from previous Change Orders: 0 days
Contract Price prior to this Change Order: \$1,633,861.65	Contract Completion Date prior to this Change Order: Substantial Completion: June 16, 2026 Final Completion: July 10, 2026
Net Increase (decrease) of this Change Order No. 1: \$37,731.77	Changes in contract time requested this Change Order No. 1: 17 days
Contract Price with all approved Change Orders: \$1,671,593.42	Contract Times with all approved Change Orders: Substantial Completion: July 3, 2026 Final Completion: July 27, 2026

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the EJCDC Agreement entered into by and between the parties on August 19, 2025.
- II. REQUIRED CHANGES:
 - A. Revisions to shared-use path layout as required at connection along Dunlawton Avenue/SR 421 to avoid conflicts with existing underground utilities. \$1,390.63
 - B. Revisions to shared-use path layout to accommodate ADA approaches at Powers Ave and installation of specified handrail/guiderail. \$3,333.39
 - C. Revisions to stormwater piping and connections to avoid conflicts with existing unknown FPL conduits to maintain functionality of the stormwater system. \$9,494.15
 - D. Remove existing tree damaged/fallen by storm event. \$1,530
 - E. Remove existing tree in conflict with proposed trail alignment and to accommodate required clearances. \$1,530
 - F. Removal and replacement of the existing 8' wide concrete shared-use path from Selin Circle to south of Oak Street due to severe damage and deterioration. \$20,453.60
 - G. Provide 9 days of additional contract time as affected by the above revisions.
 - H. Provide 8 days of additional contract time as deemed appropriate for holidays per FDOT and City schedules.
- III. JUSTIFICATION:

Changes in scope require Council approval. Is this a scope change?
Yes, the proposed changes change the scope of the EJCDC Agreement as detailed in required changes section above.
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the EJCDC Agreement subject to a limit not to exceed \$37,731.77, a total revised amount of \$1,671,593.42. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.
- V. This Change Order may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Change Order shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Change Order.

Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Department Project Manager

ACCEPTED BY:
MASCI GENERAL CONTRACTOR, INC
Contractor

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

By: _____
Printed Name: Leticia Masci Ferreira
Title: Vice President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:
KIMLEY HORN, INC.
CEI Engineer

RECOMMENDED BY:
STANLEY CONSULTANTS, INC.
Engineer of Record

By: _____
Printed Name: Mark Grande, PE
Title: Construction & Inspection Services Mgr

By: _____
Printed Name: Merlynn O. Anderson, PE
Title: Project Manager

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

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

Date Signed: _____

City Manager

By: _____
Wayne Clark, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Scott Stiltner, Mayor

Robin L. Fenwick, MMC, City Clerk

Date Signed: _____

Date Signed: _____

EXHIBIT “1”

Supporting Change Order Documentation

Consisting of 15 Pages

March 18, 2026

Ms. Lisa Epstein – City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Engineer's Certification of Change Order No. 1
SJR2C Loop Trail – ITB 25-13 – CD221

Lisa:

In our capacity as the CEI Engineer for the above-referenced project, this letter serves as certification and justification for **City Change Order No. 1**, which combines several contractor-submitted change orders into a single City-issued change order for execution. During construction, the contractor identified unforeseen field conditions and conflicts that they stated required modifications to the original contract documents in order to maintain constructability, safety, and compliance with applicable standards. The Contractor submitted the following change orders, which have been reviewed by the CEI team (Kimley-Horn and Associates, Inc.) and the Engineer of Record (Stanley Consultants, Inc.) and determined to be necessary for the successful completion of the project:

- **Contractor Change Order 001 – Concrete Substitutions / Additional Concrete**
This change order addresses required substitutions and additional quantities of concrete resulting from field conditions that differed from the original design plans. The revisions were necessary for structural integrity and proper installation in accordance with project requirements. This change order is associated with **RFI Nos. 10 and 11**.
Cost Impact: \$4,724.02
Time Impact: 2 calendar days
- **Contractor Change Order 003 – FPL Conduit Conflict / Drainage Revision**
This change order addresses unforeseen conflicts with existing FPL conduit that required revisions to the proposed drainage system to avoid utility interference. The modifications were necessary to maintain functionality of both the proposed improvements and the existing utility infrastructure. This change order is associated with **RFI No. 12**.
Cost Impact: \$9,494.15
Time Impact: 2 calendar days
- **Contractor Change Order 004 – Tree Removal (Trail Conflict)**
This change order addresses the removal of trees that were found to conflict with the proposed trail alignment. The removal was necessary to allow construction to proceed in accordance with the approved plans.
Cost Impact: \$3,060.00
Time Impact: 0 calendar days

*Contractor Change Order 002 related to potential replacement of existing shared use path is not included in this change order package and is under review for approval under separate cover.



The above contractor change orders have been reviewed for scope, cost, and necessity, and are hereby certified as fair and reasonable. For administrative efficiency, these items have been combined as **City Change Order No. 1**. The City's official Change Order form shall govern the approved adjustments to the contract amount and contract time and any other applicable provisions.

Additionally, the Change Order will document the adjustment to contract time associated with Holidays, weather impacts, and other applicable workdays in which the City was closed and the Contractor was unable to perform their work. Through January 2026 the accumulated Holiday/Weather Days for the project is **8 calendar days**. This time accounts for Veterans Day (11/11/2025), Thanksgiving (11/27/2025-11/28/2025), Christmas (12/24/2025-12/26/2025), New Years (1/1/2026), and Martin Luther King Day (1/19/2026).

Summary of City Change Order No. 1:

- Total Cost Adjustment: **\$17,278.17**
- Total Contract Time Adjustment: **12 calendar days**

- Original Contract Amount: **\$1,633,861.65**
- Adjusted Contract Amount: **\$1,651,139.82**
- Percentage of Contract Adjusted: **1.1%**

- Original Contract Time: **270 calendar days**
- Adjusted Contract Time: **282 calendar days**
- Percentage of Contract Adjusted: **4.4%**

Based on our review, the changes outlined herein are considered fair and reasonable and Kimley-Horn recommends the City of Port Orange approve City Change Order No. 1 to allow for proper completion of the project.

Should you require any additional information or clarification, please do not hesitate to contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read 'M. Grande'.

Mark D. Grande, P.E.
Project Manager
P.E. #87476

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

[illegible]

Title: _____

REQUEST FOR INFORMATION

Date: 11/13/2025

RFI No.: 010

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 15

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

Request from: Masci

Date Received: 11/13/2024

Heavy Duty Asphalt 334 SF @ \$3,034.75
Heavy Duty Concrete 334 SF @ \$5,910.75
Added cost: \$2,876.00

Description:

Sheet 15 of the plans indicates installation of an ADA mat over asphalt. Please confirm if this is the intended installation method or if a concrete base is required beneath the mat.

Additionally, the same sheet shows 16 linear feet of aluminum guard rail. Please clarify the anchoring method for this guard rail. Specifically:

- Is a concrete footer or foundation required for the aluminum guard rail installation? see FDOT Index 515-070 - Sheet 5 of 5
- If so, please provide the applicable detail or reference to the appropriate sheet or standard drawing.

REPLY REQUESTED BY:

Date Received: 11/17/2025

Response:

For the installation of the ADA mats and the Thickened edge sidewalk, please replace approximately 18 LF south of Powers Ave (starting at STA 24+28.07) and 6 LF north of Powers Ave (ending at STA 24+73.07) of Heavy Duty Asphalt Shared Use Path with Heavy Duty Concrete Shared Use Path. This change will remove approximately 334 SF of Heavy Duty Asphalt Shared Use Path and add approximately 334 SF of Heavy Duty Concrete Shared Use Path.

Attachments: FDOT Index 515-070 - Sheet 5 of 5

Description:

Response By: Karen O'Neill

Date: 11/18/2025

REQUEST FOR INFORMATION

Date: 11/13/2025

RFI No.: 011

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 14

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

old concrete quantity 148 SF (16.44 CY)
new concrete quantity 178 SF (19.77 CY)
increase in cost $19.77 - 16.44 = 3.33 \text{ CY} @ \$110.47 = \$ 368.233$

Request from: Masci

Date Received: 11/13/2024

~~6" Thick Concrete Sidewalk
per FDOT Index 522-002
30 SF @ \$110.47
Added cost: \$3,314.10~~

Description:

Sheet 14 of the plans do not show a recently installed fiber pull box that will potentially impact final grade. Can EOR provide elevations for the concrete/ flat work for this area. Also provide a anchoring detail for guardrails..

REPLY REQUESTED BY:

Date Received: 11/17/2025

Response: The sidewalk connection at Dunlawton Avenue has been revised to avoid the Fiber junction box that was installed during construction of the shared use path project. Please see the attached 14 ROADWAY PLAN for updated alignment and the 14 ROADWAY PLAN - GRADES for the updated grades. The proposed surface was modeled to match existing grades in the areas where the trail is adjacent to existing concrete. Please see FDOT Index 515-070 for the anchoring details for the guiderail.

Attachments: 14 ROADWAY PLAN - 11-21-2025
14 ROADWAY PLAN - GRADES - 11/21/2025

Description: FDOT Index 515-070

Response By: Karen O'Neill

Date: ~~REVISED 11/26/2025~~

REVISED 12/18/2025

ERRONEOUSLY LISTED SQUARE FEET INSTEAD OF SQARE YARD FOR QUANTITIES

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0110 1 1	Clearing and Grubbing	0.01	AC	\$50,000.00	\$550.00
0120 6	Embankment	6.00	CY	\$39.45	\$236.70
0400 0 11	CONCRETE CLASS NS, GRAVITY WALL INDEX 400-011 (upgrade to Scheme 2)	3	CY	\$1,532.00	\$4,596.00
	Scheme 2 footer is enlarged to 2'-0", increasing concrete and reinforcing quantities				
0430174118	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 18"SD	16	LF	\$139.77	\$2,236.32
	Pipe Delivery from supplier	1	LS	\$550.00	\$550.00
430-982-000	Miscellaneous Drainage Structure Adjustments (24" Core/Cut)	1.000	LS	\$1,325.13	\$1,325.13
	Once line items for 29 LF of 24" RCP and S-107 have been paid. They shall be turned over to the city of Port orange				
		TOTAL			\$9,494.15

Title: _____

REQUEST FOR INFORMATION

Date: 11/24/2025

RFI No.: 012

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 18

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

Request from: Masci

Date Received: 11/13/2024

Description of Issue:

During layout of the proposed 24" storm sewer pipe connecting structures S-107 and S-108, a conflict was identified with existing Florida Power & Light (FPL) buried power lines/mains. These utilities were not located or shown on the contract plans. The confirmed power lines are obstructing the proposed storm sewer alignment.

Request/Question:

Please provide direction on how to proceed with installation of the storm sewer pipe in light of this conflict. Specifically:

- Should the storm sewer alignment be revised?
- Should utility relocation be coordinated with FPL?
- Are there alternative design adjustments acceptable to the Engineer/Owner?
- Additional costs not identified at this time.

REPLY REQUESTED BY:

Date Received: 11/25/2025

Response: See response on next page

Response By: Karen O'Neill

Date: REVISED 12/02/2025
Per additional MH details

We propose a new pipe configuration as shown on the attached **Revised** plan sheets. The City is currently confirming the documentation for the 10' Utility Easement that was dedicated to the City of Port Orange per The Club at Sugar Mill As-Builts (6-2-2000)

Structure S-108 will be relocated to where the existing ditch is with an invert of 3.25.

Structure S-107 is no longer needed.

The proposed pipe has been changed from 29 LF of 24" to **8 LF of 18"**.

The existing 24" pipe is still proposed to be removed.

We believe this will avoid the FPL utilities that were encountered in the field, while providing a positive outfall for the existing ditch south of the Sugar Mill development.

The existing manhole at STA. 29+05.23 will need to be **cored or cut** into to provide the 18" pipe connection at elevation **+2.42'**.

After receiving more detailed information on the existing manhole please see the revised text in red above, the revised plan sheets 16 and 18 dated 12/2/2025, and the additional information provided for coring or cutting into the exiting manhole and additional details to the design of the gravity wall that will need to be C.I.P. around the existing manhole.

Tie in to Existing Manhole

Please see the attached Hole Placement Detail for further clarifications. The top of the hole, either cored or cut into the existing MH, will need to be no closer than 6" below the bottom of the top of the MH slab. The hole should be positioned in the center of the 5' width of the MH to maintain clearances to the MH corners. The Contractor must try to make the hole as small as possible to ensure the integrity of the existing structure. The Contractor must employ construction methods that will not produce damaging vibration, soil movement, soil loss, or instability of the existing MH. The Contractor is strongly encouraged to take their time to prevent damage to the existing MH. Any reinforcement cut during the construction should be properly sealed. The Contractor is to monitor the existing MH for cracking of the concrete and shifting of the box. Inspect the condition of the MH and all existing cracks prior to construction, during construction, and after construction is complete. Make sure no cracks are forming during the process of opening the side of the box. Upon either detecting movement of 0.010 feet or damage to the structure, immediately stop construction operations affecting the structure, backfill any open excavations, notify the EOR and City, and submit a corrective action plan for acceptance by the EOR and City.

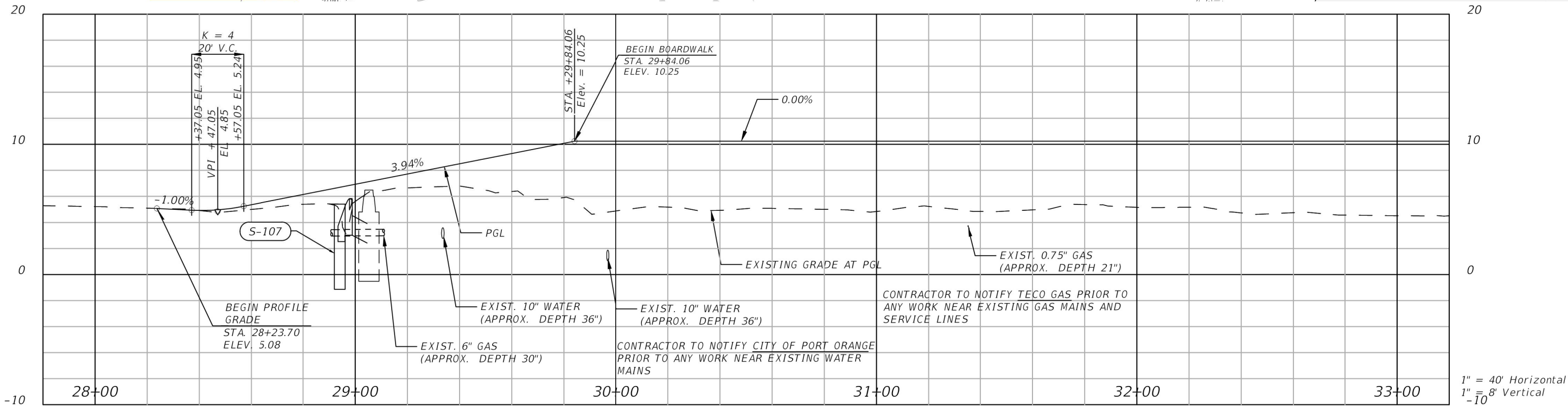
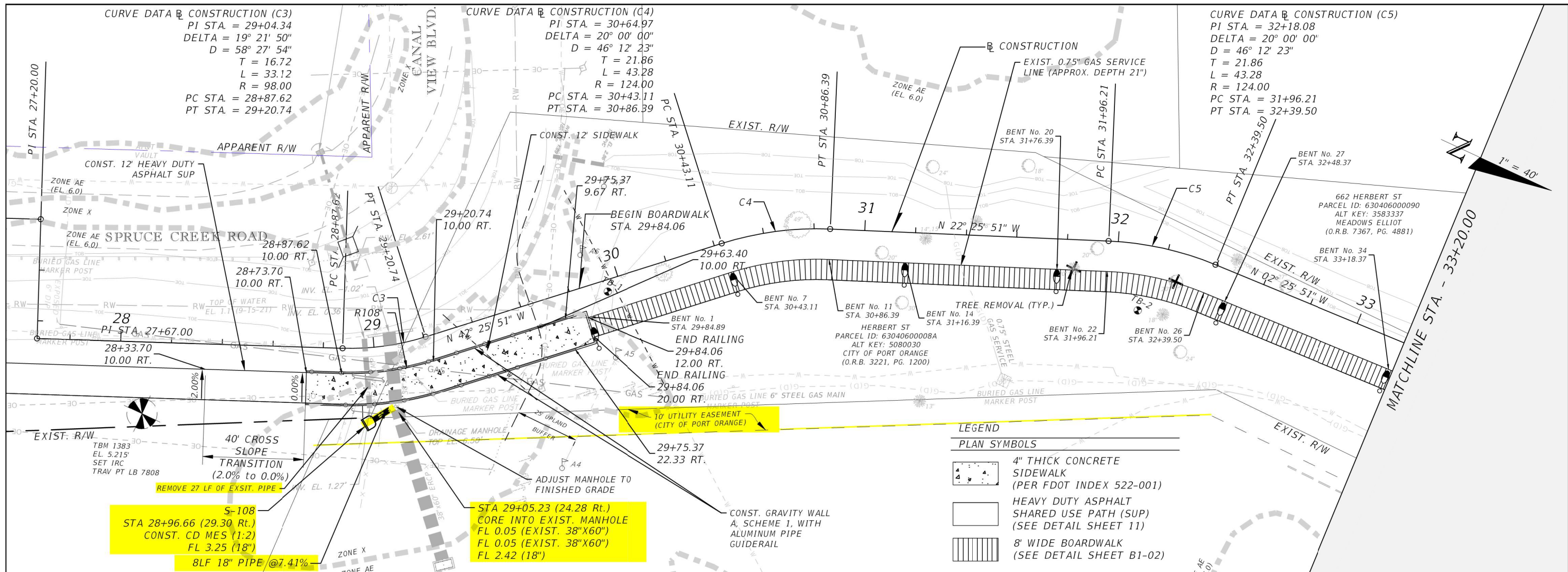
Gravity Wall

The 3' wall height from STA 28+96.46 to STA 29+14.65 adjacent to the existing MH will need to be changed from Scheme 1 to Scheme 2 per the FDOT Index 400-011. The wall will need to be formed around the existing MH and the contractor will need to provide an expansion joint between the concrete gravity wall and concrete MH. We understand that the FDOT index 400-011 Note 6 states to provide 2" PVC Drain Pipe (Sch. 40) at 10 ft. max spacing, however, we believe that placing a 2" PVC just before and one just after the existing MH will meet the drainage intents of this specification.

COSTS:

Bid Item Number	Description	Quantity	Unit	Unit Cost	Amount
0110 1 1	CLEARING & GRUBBING	0.011	AC	\$50,000.00	\$550.00
0120 6	EMBANKMENT	6	CY	\$39.45	\$236.70
0400 0 11	CONCRETE CLASS NS, GRAVITY WALL INDEX 400-011	CY	2.3	\$1,532.00	\$3,523.60
0430174118	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 18"SD	8	LF	\$139.77	\$1,118.16
0430174124	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 24"SD	-29	LF	\$165.58	(\$4,801.82)
					\$626.64

Please provide the additional costs you require to core the existing manhole.



REVISIONS	
DATE	DESCRIPTION

**CITY OF
PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

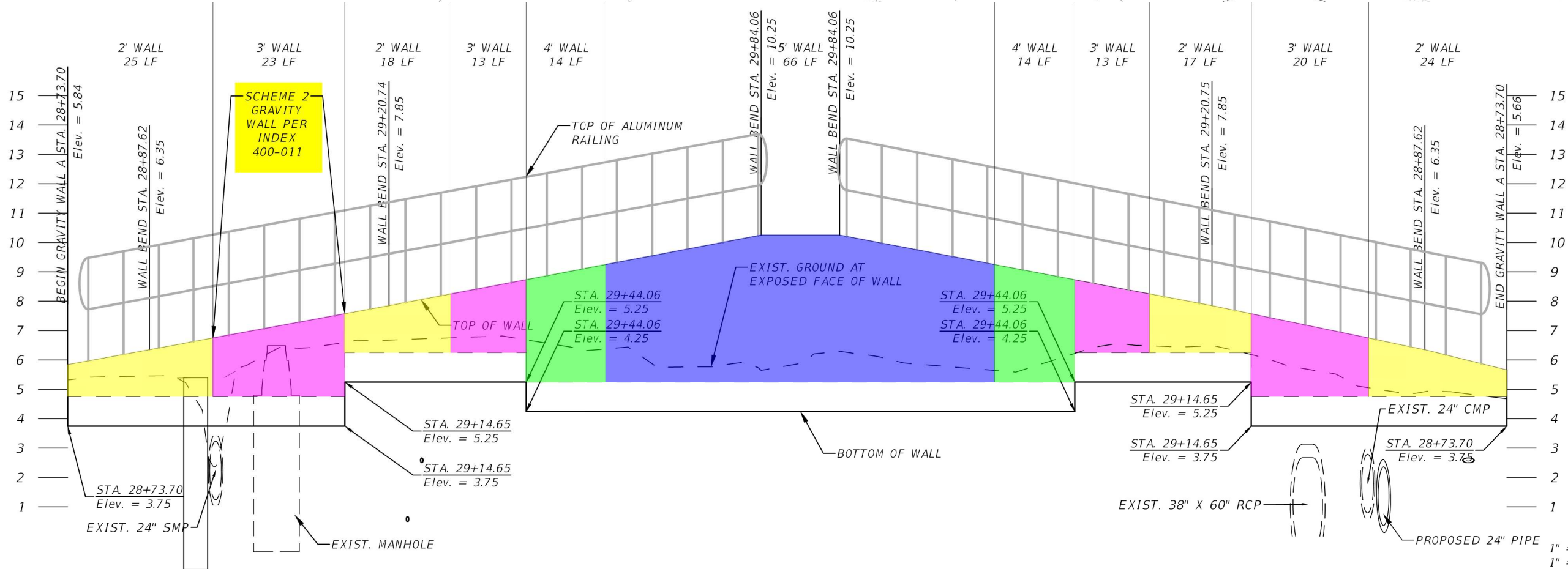
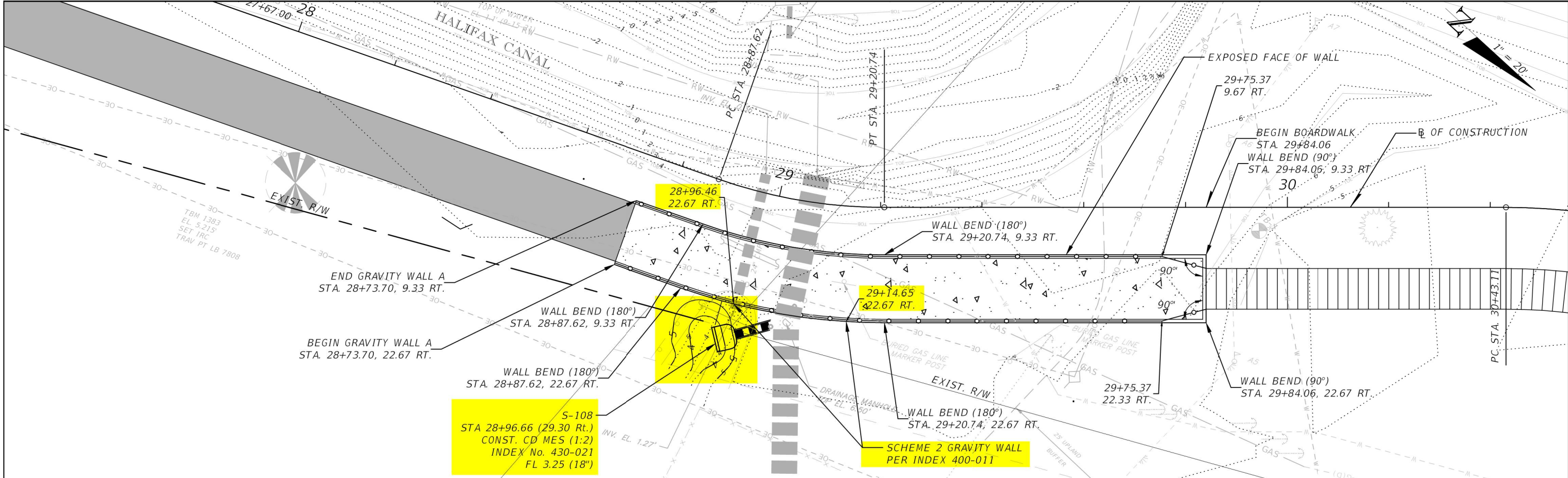
MERLYNN O. ANDERSON, P.E.
P.E. LICENSE NUMBER 83096
STANLEY CONSULTANTS, INC.
80 SPRING VISTA DRIVE
DEBARY, FL 32713

SJRC LOOP TRAIL FROM SOUTH OF SELIN CIR TO HERBERT ST		
ROAD	COUNTY	FINANCIAL PROJECT ID
SPRUCE CREEK RD	VOLUSIA	439865-3-54-01

ROADWAY PLAN AND PROFILE
12/02/2025 - REVISED PIPE CONNECTION

SHEET NO.
16

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.



REVISIONS	
DATE	DESCRIPTION



**CITY OF
PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

MERLYNN O. ANDERSON, P.E.
P.E. LICENSE NUMBER 83096

STANLEY CONSULTANTS, INC.
80 SPRING VISTA DRIVE
DEBARY, FL 32713

SJR2C LOOP TRAIL FROM SOUTH OF SELIN CIR TO HERBERT ST		
ROAD	COUNTY	FINANCIAL PROJECT ID
SPRUCE CREEK RD	VOLUSIA	439865-3-54-01

GRAVITY WALL PLAN & PROFILE
WALL A
12/02/2025-REVISED PIPE

SHEET NO.
18

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.



5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0110 23	Tree Removal (already removed, tree fell over)	1	EA	\$1,540.00	\$1,540.00
0110 23	Tree Removal Tree encroaching trail less than 24" (Not Yet Removed)	1	EA	\$1,540.00	\$1,540.00
		TOTAL			\$3,080.00

DAYS ADDED TO CONTRACT

1. Item 102-1 Maintenance of Traffic is only included for Masci's scope of work. Prime contractor to provide all MOT devices such as (i.e. Flagmen, temp construction signs, LCDs, barricades, arrow boards, message boards, off duty officers, LCNS, Pedestrian Escort, etc.) that may be required for the project.
2. Pricing does not include any additional work necessary to adhere to the FDOT index 600 drop-off criteria.
3. Pricing excludes all permits and fees, utility locations or adjustments, railroad insurance, railroad flagging, contamination removal, asphalt patching, trench cut repairs, temp. paint and RPMs
4. No Survey or As Built included in quoted prices, Prime to provide survey as needed.
5. Masci will provide QC testing for our scope of work only; Ex.: Asphalt Operations performed by Masci.
6. The above stated exclusions may not list all items, but unless Masci's quotation specifically states a bid item, please assume that it is not included in Masci's scope of work quoted for the project.

NOTE: This proposal may be withdrawn by Masci if not signed and received in our office with 30 days of date of quote.

Date: _____

UPON EXECUTION OF THIS CHANGE ORDER BY MASCI AGENT BELOW THIS DOCUMENT BECOMES A CONTRACT.

ACCEPTED BY CLIENT: _____

Title: _____

Date: _____

March 18, 2026

Ms. Lisa Epstein – City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Engineer's Certification of Change Order No. 2
SJR2C Loop Trail – ITB 25-13 – CD221

Lisa:

In our capacity as the CEI Engineer for the above-referenced project, this letter serves as certification and justification for **City Change Order No. 2**. During construction, the contractor identified unforeseen field conditions related to the existing shared use path on Spruce Creek Road where the project improvements proposed to connect. The existing shared use path has multiple issues from cracks and breaks to slopes and joint thresholds that do not meet ADA compliance. In order to make the proposed connections per the original contract documents, modifications to the existing shared use path at each tie-in location would be required at minimum to maintain constructability, safety, and compliance with applicable standards. Replacement of the existing shared use path between new sections of path will significantly improve the overall quality and lifespan of the trail. The Contractor submitted the following change order proposal, which has been reviewed by the CEI team (Kimley-Horn and Associates, Inc.) and Engineer of Record (Stanley Consultants, Inc.) and determined to be necessary for the successful completion of the project:

- **Contractor Change Order 002 – 8' Concrete Shared Use Path – Selin Circle to Oak St.**
This change order consists of the complete costs for removal and replacement of 178 LF of the existing 8' concrete shared use path on Spruce Creek Road from the proposed trail connection locations near Selin Circle and Oak Street. Sod restoration costs are included in this change order. All unit costs submitted are consistent with the contract unit costs established.

The above contractor change order has been reviewed for scope, cost, and necessity, and is hereby certified as fair and reasonable. The City's official Change Order form shall govern the approved adjustments to the contract amount and contract time and any other applicable provisions.

Summary of City Change Order No. 2:

- Total Cost Adjustment: **\$12,044.75**
- Total Contract Time Adjustment: **5 calendar days**
- Original Contract Amount: **\$1,633,861.65**
- Previous Adjusted Contract Amount: **\$1,651,139.82**
- New Adjusted Contract Amount: **\$1,663,184.57**
- Total Percentage of Contract Adjusted: **1.8%**
- Original Contract Time: **270 calendar days**
- Previous Adjusted Contract Time: **282 calendar days**
- New Adjusted Contract Time: **287 calendar days**
- Total Percentage of Contract Adjusted: **6.3%**



Based on our review, the changes outlined herein are considered fair and reasonable and Kimley-Horn recommends the City of Port Orange approve City Change Order No. 2 to allow for the replacement of the existing shared use path within the overall project limits and proposed trail route that is currently of substandard condition.

Should you require any additional information or clarification, please do not hesitate to contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "M. Grande".

Mark D. Grande, P.E.
Project Manager
P.E. #87476

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

[illegible]

DAYS ADDED TO CONTRACT

1. Item 102-1 Maintenance of Traffic is only included for Masci's scope of work. Prime contractor to provide all MOT devices such as (i.e. Flagmen, temp construction signs, LCDs, barricades, arrow boards, message boards, off duty officers, LCNS, Pedestrian Escort, etc.) that may be required for the project.
2. Pricing does not include any additional work necessary to adhere to the FDOT index 600 drop-off criteria.
3. Pricing excludes all permits and fees, utility locations or adjustments, railroad insurance, railroad flagging, contamination removal, asphalt patching, trench cut repairs, temp. paint and RPMs
4. No Survey or As Builts included in quoted prices, Prime to provide survey as needed.
5. Masci will provide QC testing for our scope of work only; Ex.: Asphalt Operations performed by Masci.
6. The above stated exclusions may not list all items, but unless Masci's quotation specifically states a bid item, please assume that it is not included in Masci's scope of work quoted for the project.

NOTE: This proposal may be withdrawn by Masci if not signed and received in our office with 30 days of date of quote.

Estimator:

UPON EXECUTION OF THIS CHANGE ORDER BY MASCI AGENT BELOW THIS DOCUMENT BECOMES A CONTRACT.

All costs of collection shall be paid by the customer including reasonable attorney fees.

Date: _____

Title: _____

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 **Masci General Contractor, Inc., 5752 South Ridgewood Avenue, Port Orange, Florida 32127** ("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:

Florida Department of Transportation ("FDOT" and/or "Department") State-Funded Grant Project participation in the SJR2C (St Johns River to Sea) Loop Trail (Spruce Creek Road) from South of Selin Circle to Herbert Street project.

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 25-13 - 4398653-2-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From S. of Selin Circle to Herbert Street ("Project").

ARTICLE 3—ENGINEER

- 3.01 The Project has been designed by the Design Professional specified and Engineer shall serve as Owner's agent for purposes of approving Contractor's payment requests, and as otherwise provided in the Contract documents.

A. The part of the project that pertains to the Work has been designed by Merlynn Anderson, P.E. ("Design Professional of Record") of Stanley Consultants.

B. The Owner has retained **KIMLEY-HORN AND ASSOCIATES, INC.** ("Engineer"), a North Carolina corporation, to 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 **246** 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.
- B. Unless otherwise modified in a Notice to Proceed issued after the Effective Date of the Agreement or an allowable extension of time in accordance with Paragraph 4.01 of the General Conditions, the work shall be finally completed in accordance with Paragraph 15.06 of the General Conditions **270** days from the Notice to Proceed.

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. 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/Schedule of Unit Pricing.* *Due to error in rounding, the "Grand Total of All Items" on Contractor's Bid Schedule has been corrected on the City of Port Orange's Bid Tabulation, for a corrected amount of \$1,633,861.65.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$1,633,861.65*

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 (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 12, 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. PLANS - SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert Street, on file with Margaret Tomlinson, Construction and Engineering Manager (pages 1 to 63, inclusive).

6. Timber Boardwalk Structural Design Calculations, on file with Margaret Tomlinson, Construction and Engineering Manager (pages 1 to 63, inclusive).
7. Lighting Plans, on file with Margaret Tomlinson, Construction and Engineering Manager (pages 1 to 10, inclusive).
8. Addendum No. 1, dated June 2, 2025 (page 1, inclusive).
9. Addendum No. 2, dated June 20, 2025 (pages 1 to 7, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule/Schedule of Unit Pricing (pages 1 to 2, inclusive)
* See notes on Page 3 of EJCDC Agreement, Article 5, Subsection 5.01(B).
 - b. Exhibit No. 2 Contractor's Proposal, on file with City of Port Orange Purchasing Department (pages 1 to 66, inclusive).
 - c. Exhibit No. 3 Composite Exhibit No. 3 City's ITB # 25-13 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) from South of Selin Circle to Herbert Street (pages 1 to 183, not attached, on file with office of the City Clerk).
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

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

8.02 *Contractor's Certifications*

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

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

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.
- 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 to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

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

9.06 *Public Record Compliance*

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

9.07 *Records*

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

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

9.08 *Force Majeure*

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

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *Insurance Requirements*

If the recipient elects to self-perform the Project, and such self-performance is approved by the Department in accordance with the terms of this Agreement, the Recipient may self-insure and proof of self-insurance shall be provided to the Department. If the Recipient elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor

or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida. Recipient shall, or cause its contractor to cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "Occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or dismissed by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

9.13 *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.

9.14 *Indemnity*

To the extent provided by law, Contractor shall indemnify, defend, and hold harmless the City and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor.

The foregoing indemnification shall not constitute a waiver of the Department's or City's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify City for the negligent acts or omissions of City, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Department for the negligent

acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.

9.15 *Cooperation with Inspector General*

Contractor agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

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

This Agreement will be effective on 8/19/2025 (which is the Effective Date of the Contract).

Contractor:

Masci General Contractor, Inc.
(typed or printed name of organization)

By: [Signature]
(individual's signature)

Date: 8/12/2025
(date signed)

Name: Leticia Maria Masci Ferreira
(typed or printed)

Title: Vice President
(typed or printed)

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

Attest: [Signature]
(individual's signature)

Title: Secretary
(typed or printed)

Address for giving notices:

5752 South Ridgewood Avenue
Port Orange, Florida 32127

Phone: (386) 322-4500

Email: leticiamasci@mascigc.com

License No.: CGC1518864

State: Florida

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

8/19/2025

(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



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: Masci General Contractor, Inc.
Principal Business Address: 5752 South Ridgewood Avenue
Port Orange, Florida 32127
Contact Person: Leticia Maria Masci Ferreira, Vice President
Phone Number: (386) 322-4500

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: \$1,633,861.65 **City Case/Project No.** **ITB 25-13 ITB 25-13 439865-3-54-01 SJR2C Loop Trail**

Description of Work: ITB 25-13 439865-3-54-01 SJR2C Loop Trail

Project Location: Florida Department of Transportation ("FDOT") St Johns River to Sea (SJR2C) Loop Trail
Project, Spruce Creek Road from South of Selin Circle to Herbert Street, Port Orange, Volusia County, Florida

Legal Description: Florida Department of Transportation ("FDOT") St Johns River to Sea (SJR2C) Loop Trail
Project, Spruce Creek Road from South of Selin Circle to Herbert Street, Port Orange, Volusia County, Florida.

Front Page

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

Masci General Contractor, Inc.

ITB 25-13 439865-3-54-01 SJR2C Loop Trail

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, **MASCI GENERAL CONTRACTOR, 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 THIRTY-THREE THOUSAND EIGHT HUNDRED SIXTY-ONE AND 65/100 DOLLARS (\$1,633,861.65)**, 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 SJR2C Loop Trail, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

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

Attest:

MASCI GENERAL CONTRACTOR, INC.
(Name of Principal)

(As to Corporate Principal) Secretary

By: _____
Leticia Maria Masci Ferreira, Vice 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



Endorsed By



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National Society of Professional Engineers

1420 King Street, Alexandria, VA 22314-2794

(703) 684-2882

www.nspe.org

American Council of Engineering Companies

1015 15th Street N.W., Washington, DC 20005

(202) 347-7474

www.acec.org

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

(800) 548-2723

www.asce.org

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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.

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.

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.

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."
35. *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.
36. *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.
37. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
38. *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.
39. *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.
40. *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.
41. *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.
42. *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.

43. *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.
44. *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.
45. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
46. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
47. *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.
48. *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.

- 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.

49. *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.

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

51. *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.

52. *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.

- 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

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 Contract award or at the preconstruction conference (or as otherwise required by the Contract Documents), or whichever is later, 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. The Engineer will review and respond to the Contractor within 15 calendar days of receipt of the Progress Schedule. The Engineer will return inadequate Progress Schedules to the

Contractor for corrections. Resubmit a corrected schedule within 15 calendar days from date of the Engineer's return transmittal.

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 Work prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner 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.

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

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. *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 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*

- 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.

- 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. 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
 3. 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.

- 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

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 asphalt paths. 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. 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. 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.

- 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 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.
- 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.
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 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.
- 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.
- 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, 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.
- 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 Contractor 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;
 - 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.
 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, State of Florida, Department of Transportation 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). 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, 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.
- E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplementary Conditions, the specific insurance requirements in the Supplementary 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 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 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 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.
- 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.
- 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 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 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 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.
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 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.
 - 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;
 - 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 extent provided by law, Contractor shall indemnify, defend, and hold harmless the Owner and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor.

The foregoing indemnification shall not constitute a waiver of the Department's or Owner's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify City for the negligent acts or omissions of Owner, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.

- 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 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.

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 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.
- 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.

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 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.

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.

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 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 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.
- g. This paragraph is supplemented by 23 CFR 635.109, and any conflict herewith, the 23 CFR 635.109 shall prevail.

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 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 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.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY12.01 CLAIMS - DELETED IN ITS ENTIRETY: PLEASE REFER TO LAP DIVISION I SPECIFICATIONS PACKAGE, SECTION(S) 5-12, "CLAIMS BY CONTRACTOR."

- A. DELETED IN ITS ENTIRETY.1. DELETED IN ITS ENTIRETY.2. DELETED IN ITS ENTIRETY.3.
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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. *Allowable Costs for Extra Work*: Refer to Specifications 4-3.2.1 and 4-3.2.2.

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.
- 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 based on Specification 4-3.

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;
 - 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.

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 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 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 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;
 - 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
 - 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.
- 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.

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 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.

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.

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 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. 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*

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

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.

EJCDC PLANS - SJR2C Loop Trail from South of Selin Circle to Herbert Street
on file with Margaret Tomlinson, Construction and Engineering Manager

Consisting of 63 Pages

Timber Boardwalk Structural Design Calculations

on file with Margaret Tomlinson, Construction and Engineering Manager

Consisting of 63 Pages

Lighting Plans

on file with Margaret Tomlinson, Construction and Engineering Manager

Consisting of 10 Pages

EJCDC Addendum No. 1 Dated June 2, 2025
consisting of 1 page



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5740
purchdiv@port-orange.org

ADDENDUM #1

June 2, 2025

ITB #25-13 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From South of Selin Circle to Herbert Street

To All Respondents:

The following changes, clarifications and additions are hereby made part of the ITB for the above referenced project dated May 30, 2025 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of the respondent to confirm that all addenda have been received prior to submitting a bid and acknowledge such in the ITB documents.

A. CLARIFICATIONS:

N/A

B. CHANGES TO SPECIFICATIONS:

REVISED SJR2C Loop Trail (Spruce Creek Rd.) Plans hereby replaces the original file SJR2C Loop Trail (Spruce Creek Rd.) Plans and is posted as a separate document on <https://www.port-orange.org/bids.aspx?bidID=223> and www.demandstar.com.

C. QUESTIONS AND ANSWERS:

N/A

In all other respects, except as specifically stated herein, the subject *ITB #25-13 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From South of Selin Circle to Herbert Street* remains unchanged.

END OF ADDENDUM #1

EJCDC Addendum No. 2 Dated June 20, 2025
consisting of 7 pages



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
purchdiv@port-orange.org

ADDENDUM #2

June 20, 2025

ITB #25-13 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From South of Selin Circle to Herbert Street

To All Bidders:

The following changes, clarifications and additions are hereby made part of the ITB for the above referenced project dated May 30, 2025 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of the bidder to confirm that all addenda have been received prior to submitting a bid and acknowledge such in the ITB documents.

A. CLARIFICATIONS:

None

B. CHANGES TO ITB DOCUMENT:

None

C. QUESTIONS AND ANSWERS:

Question #1

Do Davis-Bacon Wages apply to this project?

Answer #1

No.

Question #2

How high should the canopy be cleared for the length of the boardwalk?

Answer #2

Final tree trimming is required to 15' clearance above the boardwalk.

Question #3

What pay item should include the removal of existing pipes and end treatments?

Answer #3

The removal of the existing pipes and end treatments should be included under Pay Item 0110 1 1 CLEARING AND GRUBBING. Per FDOT Specifications 430-12.2 the cost of excavating and removing the old pipe and of its disposal will be included in the contract unit price for Clearing and Grubbing. Per FDOT Specifications 110-2.1 Clearing and Grubbing includes the removal and disposal of drainage structures.

Question #4

What are the approved "optional materials" for all pipe culverts listed on the bid form?

Answer #4

All proposed pipes are to be RCP.

Question #5

Is it the contractor's responsibility to furnish and install item # CITY-01 18" wapro stainless wastop inline check valve?

Answer #5

Yes

Question #6

Are there additional specs or details for furnishing and installing item # CITY-01 18" wapro stainless wastop inline check valve?

Answer #6

Additional details and specifications for the wapro stainless wastop inline check valve are attached to this addendum.

Question #7

Is Port Orange Utilities to provide all Utility Light Poles, Arms & Fixtures? Are they also going to install these Light Poles & Fixtures?

Answer #7

The power company FPL will provide and install all utility light poles, arms and fixtures for the roadway lighting.

Question #8

Is the Contractor to provide and install all underground conduit & wiring for the Utility Light Pole Fixtures? Or is this also to be done by Port Orange?

Answer #8

The power company FPL will provide and install all underground conduit and wiring for the roadway lighting.

Question #9

Are there any restrictions regarding underground conduit & wire that is to be run through intersections? Directional Bore required?

Answer #9

See answer to Question #8.

Question #10

Who is providing the Wood Posts & Post-Top Fixtures for the Boardwalk Lighting?

Answer #10

The Contractor will provide and install all lighting equipment for the boardwalk including the wood posts and post top fixtures. The power company FPL will provide service to the Service Point and the Contractor is responsible for all boardwalk lighting beyond that point.

Question #11

Who is providing the 3' x 6' Concrete Bases for the Wood Posts & Post-Top Fixtures (Boardwalk Lighting)?

Answer #11

The Contractor will provide and install all lighting equipment for the boardwalk including the 3' x 6' concrete bases, which are included under Pay Items 0715 516-513 and 0715 516-518.

Question #12

Is there a specification for the conduit & wiring methods used for the Boardwalk Lighting?

Answer #12

Conduit and Wiring methods should follow National Electrical Code (NEC) and FDOT standards.

Question #13

Can you please provide the engineer's cost estimate for this project?

Answer #13

\$2,333,603.00

Question #14

Will design alternatives be accepted concerning the boardwalk construction?

Answer #14

Due to the process and timeframes involved in obtaining concurrence and the State's approved timeframe for construction, design alternatives for the boardwalk cannot be considered.

Question #15

Will the bid schedule be provided in Excel format?

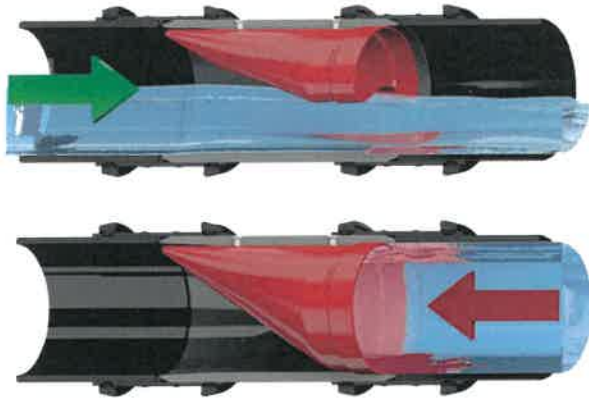
Answer #15

No.

In all other respects, except as specifically stated herein, the subject ***ITB #25-13 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From South of Selin Circle to Herbert Street*** remains unchanged.

END OF ADDENDUM #2

WASTOP®



WASTOP® INLINE CHECK VALVE

We all know someone who has been affected by it. We see it, feel it and experience it. Climate change and rising sea levels are affecting us all. Through the innovation of WaStop Inline Check Valve, we at Wapro have prevented thousands of floods worldwide.

In order to protect against flooding, we have engineered the WaStop inline check valve to ensure the lowest possible opening pressure whilst maintaining the best possible seal against backflow. This, combined with the lowest headloss available, gives the most efficient flow conditions, ensuring the fastest evacuation of water. An essential quality of check valves used to protect people and property. WaStop protects.

ADVANTAGES OF WASTOP®

- Easy installation saving on construction & installation costs
- Superior construction materials
- Lowest headloss amongst inline check valves
- Low life cycle cost
- No moving parts - virtually maintenance-free
- Many dimensions 75-2000mm std & non-standard pipes
- Stops liquids, gases, odours, insects and small animals
- Stops backflow effectively even in low flow events

APPLICATIONS - WASTE WATER, SURFACE WATER, TIDAL AREAS

We at Wapro know that any solution for flood prevention or odour control needs to function. Simply, effectively. That's why, when we invented the WaStop inline check valve in 2000, we had one thought in mind. Instant automatic protection. Working on differential pressure the WaStop functions autonomously, without human interaction, without electricity, without constant maintenance. It just works.

To invent the best inline check valve on the market our engineers went one step further. We also thought about the different parts of the process and who would be affected by the design of the valve. With function top of mind our engineers developed a valve that works in stormwater, sewer, odour applications, as well as ensuring to cover the range of sizes of existing pipes to enable retro-fitting with ease. We cover all sizes of pipes, all shapes, from 75mm-2000mm. As standard. Off the shelf in most cases, for fast delivery. We keep stock to ensure the contractor and end user can keep time and costs to a minimum.



WAPRO

WASTOP®

BENEFITS OF SUPERIOR CONSTRUCTION

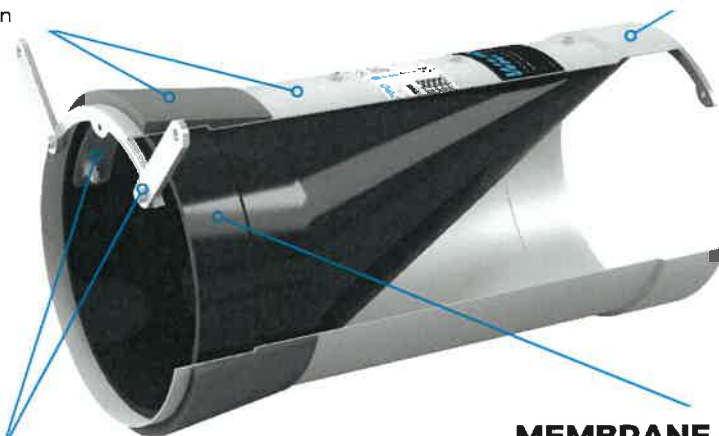
WaStop® is designed to provide asset and property owners' peace of mind. Simply the most reliable, high quality inline check valve on the market.

HOUSING & SEAL

- Thin stainless housing
- Perfect function regardless of the existing pipe quality
- Peace of mind knowing the seal is 100% tight
- Low life-cycle cost
- Lower energy costs
- Quick, easy installation

DOUBLE COLLARS

- Fast deliveries
- Easy installation for inlet or outlet installation
- Reduces costs by having one product for multiple installations situations
- Helps you meet your budget



FIXATION MATERIAL

- Long life expectancy and low life-cycle cost with high quality materials
- Peace of mind - engineered product that exceeds expectations

MEMBRANE

- Protection even in low flow events
- Pulsating flow reducing sedimentation up and downstream
- Extremely low headloss
- Low maintenance costs
- Memory membrane - doesn't sag

THE VERSATILITY OF WASTOP®



INLINE INSTALLATION



CHAMBER INSTALLATION



OUTLET INSTALLATION



FLANGE INSTALLATION



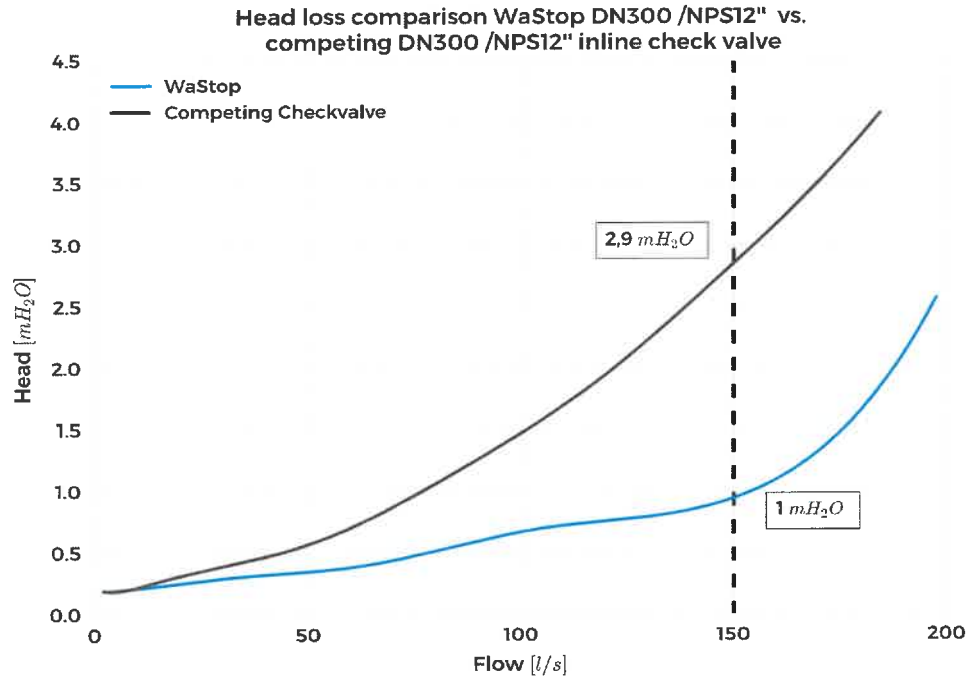
WASTOP® PRE-INSTALLED IN AN ACCESS CHAMBER

The WaStop Access Chamber provides you with peace of mind. Once installed the WaStop Access chamber provides complete protection against backflow in the sewer or combined sewer network. One ingenious product protects your basement or property from flooding caused by an overload or surcharge in the sewer system.

- Easy access from ground level
- Easy to inspect - simply lift manhole cover and pull up the WaStop module
- Delivered complete - inspection chamber and check valve in one

LOW HEAD LOSS IS ESSENTIAL

Comparing head loss data is difficult as the test procedure is rarely presented and there are multiple ways of altering data. However, the test results shown below were conducted in the same facility with the same reference points and are therefore comparable. The test result shows that the **WaStop has 65% lower head loss** than a competing inline check valve at flow 150l/s. Both valves were tested in the same open air scenario.



THE WIDEST RANGE OF SIZES TO SUIT ALL PIPES

We at Wapro know that there is a wide range of pipes available on the market, and that these pipes aren't always perfect. To ensure the valve we provide you with fits perfectly and protects 100% we've engineered the gress work out of it.

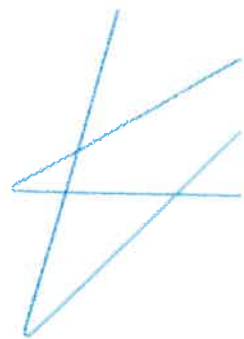
Keeping in line with our customer promise of commonsense and simplicity, we have developed a standard range of WaStop from DN75-2000mm. On top of this we have a Superior Fit Seal to ensure there is no leakage between the existing pipe and the WaStop inline check valve. We designed this seal to not only create the perfect fit, but also to ensure quick easy installation. Time is money.

All sizes are available in short versions or with flanges and can be customized to suit your needs. All WaStop standard valves are reversible for inlet or outlet installation and are able to be used vertically as well as horizontally.



WASTOP® STANDARD RANGE DIMENSIONS

Long life-cycle is part of our DNA. It's part of our values. With this in mind we use the right materials for the right application. Stainless steel AISI 304 (EN1.4301) and AISI 316L (EN1.4404), and PVC/PE, along with a membrane material suited to the application.



WASTOP® STANDARD - 304/316 STAINLESS STEEL

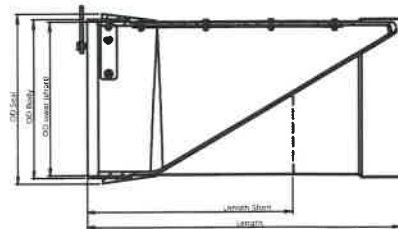
Model*	DN	Length	Length (Short)**	OD seal	OD body	OD waist (OD Short)	Opening pressure Standard***	Closing pressure Standard	Installation pipe*		Weight
	[mm]	[mm]	[mm]	[mm]	[mm]	[mm]	[mmH ₂ O]	[mmH ₂ O]	Min	Max	[kgs]
WS97	100	210	160	102	97	93	180	70	99	101	0,7
WS101	110	215	165	105	100	96	190	60	101	104	0,8
WS116	125	230	160	120	115	111	250	90	117	120	0,9
WS146	150	300	200	160,5	144,5	138,5	230	80	146	159	2,4
WS183	200	385	270	201	181	173	260	120	182	200	4
WS193	200	395	275	211	191	183	210	110	193	210	5
WS215	225	450	300	235	215	207	220	130	216	233	5,5
WS230	250	480	320	250	230	222	200	120	232	248	6
WS240	250	520	350	260	240	232	190	110	242	258	7
WS265	300	550	365	285	265	256	180	120	267	283	10
WS290	300	600	400	310	290	280	220	160	293	307	10
WS340	350	700	500	352	340	328	360	220	343	349	18
WS370	400	730	500	394	370	358	240	160	373	391	20
WS390	400	750	500	414	390	378	310	190	393	411	24
WS440	450	840	560	467	443	431	210	140	446	464	28
WS490	500	900	600	506	490	474	270	180	493	503	29
WS515	515	1000	650	539	515	499	265	165	518	536	38
WS590	600	1200	800	603	587	567	370	240	590	598	48
WS690	700	1300	870	710	690	670	280	180	695	705	63
WS750	750	1400	950	770	750	726	390	240	755	765	75
WS790	800	1500	1000	810	790	766	350	230	795	805	88
WS885	900	1700	-	915	885	855	400	270	890	910	116
WS985	1000	1800	-	1015	985	955	390	260	990	1010	141
WS1040	1050	2000	-	-	1040	-	350	220	1048	-	221
WS1185	1200	2250	-	-	1185	1155	460	290	1190	-	290
WS1385	1400	2600	-	-	1385	1349	540	350	1390	-	440
WS1485	1500	2800	-	-	1485	1441	620	390	1490	-	642
WS1585	1600	3000	-	-	1585	1541	600	380	1590	-	700

*We have a standard set of sizes which can be customized, easily, to suit any application. Flanges on inlet, outlet or somewhere in between are all easily available. Quickly. **Customized extra short valves are available. *** Open air. Standard membrane. Lower and higher opening pressures available.

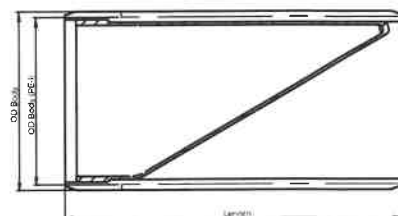
WASTOP® STANDARD - PVC/PE

Model	DN	Length	OD body	Opening Pressure Standard	Closing Pressure Standard	Weight
	[mm]	[mm]	[mm]	[mmH ₂ O]	[mmH ₂ O]	[kgs]
WS75PVC	75	125	75	190	70	0,3
WS110PVC	110	210	110	200	60	0,9
WS125PVC	125	240	125	190	80	1,2
WS160PVC	160	310	160	220	80	2,1
WS200PVC	200	400	200	190	110	4,1
WS250PE	250	480	250	220	130	6,3
WS250PE-I	250	480	236	220	140	4,6
WS315PE	315	600	315	220	160	12,5
WS315PE-I	315	600	295	230	170	8,3

WASTOP® STANDARD - STAINLESS



WASTOP® STANDARD - PVC/PE



WAPRO

www.wapro.com

EJCDC Exhibit No. 1
Contractor's Bid Schedule/Schedule of Unit Pricing
Consisting of 2 pages

*See notes on Page 3 of EJCDC Agreement, Article 5, Subsection 5.01(B)

**(ATTACHMENT 1) SCHEDULE OF UNIT PRICING****CITY OF PORT ORANGE****ITB #25-13****439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) from South of Selin Circle to Herbert Street****Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission****Bidders are required to complete all fields shaded in green.****(ATTACHMENT 1) SCHEDULE OF UNIT PRICING MUST BE SIGNED**NAME OF BUSINESS: **Masci General Contractor, Inc.**CONTACT PERSON: **Leticia M. Ferreira, Vice President**EMAIL ADDRESS: **leticiamasci@mascigc.com**AUTHORIZED SIGNATURE: **ALL UNIT PRICING IN ACCORDANCE WITH SPECIFICATIONS - AWARD WILL BE MADE BASED ON GRAND TOTAL PRICING FOR ALL ITEMS****BID ITEMS - PER SECTION 3 - SCOPE OF WORK**

ITEM #	ITEM DESCRIPTION	QTY	UNIT of MEASURE	UNIT PRICE	EXTENDED PRICE
0101 1	MOBILIZATION	1	LS	\$ 143,258.00	\$ 143,258.00 -
0102 1	MAINTENANCE OF TRAFFIC	1	LS	\$ 25,000.00	\$ 25,000.00 -
0104 10 3	SEDIMENT BARRIER	5,168	LF	\$ 1.75 -	\$ 9,044.00 -
0104 11	FLOATING TURBIDITY BARRIER	200	LF	\$ 12.50 -	\$ 2,500.00 -
0104 18	INLET PROTECTION SYSTEM	3	EA	\$ 200.00 -	\$ 600.00 -
0110 1 1	CLEARING & GRUBBING	0.689	AC	\$ 50,000.00	\$ 34,450.00 -
0110 2 2	SELECTIVE CLEARING AND GRUBBING, AREAS WITH TREES TO REMAIN	0.529	AC	\$ 75,000.00	\$ 39,675.00 -
0110 23	TREE REMOVAL	5	EA	\$ 1,540.00-	\$ 7,700.00 -
0110 4 10	REMOVAL OF EXISTING CONCRETE	189	SY	\$ 37.50 -	\$ 7,087.50 -
0120 1	REGULAR EXCAVATION	68.0	CY	\$ 35.27 -	\$ 2,398.36 -
0120 6	EMBANKMENT	215.0	CY	\$ 39.45 -	\$ 8,481.75 -
0160 4	TYPE B STABILIZATION	1,038	SY	\$ 8.50 -	\$ 8,823.00 -
285701-A	DENSE GRADED AGGREGATE BASE (98% MOD PROCTOR DENSITY) 3" THICK	1,038	SY	\$ 27.50 -	\$ 28,545.00 -
0334 1 12	SUPERPAVE ASPHALTIC CONC, TRAFFIC B	342.5	TN	\$ 139.57 -	\$ 47,802.73 -
0400 0 11	CONCRETE CLASS NS, GRAVITY WALL INDEX 400-011	83.3	CY	\$ 1,532.00	\$ 127,615.60-
0425 1521	INLETS, DT BOT, TYPE C, <10'	3	EA	\$ 8,240.00-	\$ 24,720.00 -
0425 5	MANHOLE, ADJUST	1	EA	\$ 1,050.00	\$ 1,050.00 -
0430174118	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 18"SD	131	LF	\$ 139.77 -	\$ 18,309.87 -
0430174124	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 24"SD	29	LF	\$ 165.58 -	\$ 4,801.82 -
0430982125	MITERED END SECTION, OPTIONAL ROUND, 18" CD	3	EA	\$ 3,700.00	\$ 11,100.00 -
0430982129	MITERED END SECTION, OPTIONAL ROUND, 24" CD	1	EA	\$ 4,000.00-	\$ 4,000.00 -
0430984125	MITERED END SECTION, OPTIONAL ROUND, 18" SD	1	EA	\$ 3,700.00-	\$ 3,700.00 -
0515 1 2	PIPE HANDRAIL - GUIDERAIL, ALUMINUM	308	LF	\$ 71.00 -	\$ 21,868.00 -
0520 1 10	CONCRETE CURB & GUTTER, TYPE F	180	LF	\$ 53.40 -	\$ 9,612.00 -
0522 1	CONCRETE SIDEWALK AND DRIVEWAYS, 4" THICK	485	SY	\$ 89.50 -	\$ 43,407.50 -
0522 2	CONCRETE SIDEWALK AND DRIVEWAYS, 6" THICK	284	SY	\$ 110.47 -	\$ 31,373.48 -
0527 2	DETECTABLE WARNINGS	287	SF	\$ 28.00 -	\$ 8,036.00 -
0570 1 2	PERFORMANCE TURF, SOD	2,558	SY	\$ 5.10 -	\$ 13,045.80 -
0630 2 11	CONDUIT, FURNISH & INSTALL, OPEN TRENCH	364	LF	\$ 27.73 -	\$ 10,093.36-
0630 2 12	CONDUIT, FURNISH & INSTALL, DIRECTIONAL BORE	120	LF	\$ 33.41 -	\$ 4,009.20 -
0630 2 14	CONDUIT, FURNISH & INSTALL, ABOVEGROUND	90	LF	\$ 18.86 -	\$ 1,697.67 -
0630 2 15	CONDUIT, FURNISH & INSTALL, BRIDGE MOUNT	697	LF	\$ 20.64 -	\$ 14,388.87-
0632 7 2	SIGNAL CABLE- REPAIR/REPLACE/OTHER, FURNISH & INSTALL	50	LF	\$ 9.02 -	\$ 451.10 -
0633 6	FIBER OPTIC CABLE LOCATOR	1	DA	\$ 532.35-	\$ 532.35 -
0635 2 11	PULL & SPUCE BOX, F&I, 13" x 24" COVER SIZE	15	EA	\$ 3,202.50	\$ 48,037.47-
0635 3 11	JUNCTION BOX, FURNISH & INSTALL, AERIAL	12	EA	\$ 1914.60	\$ 22,975.21
0639 1112	ELECTRICAL POWER SERVICE, F&I, OVERHEAD METER PURCHASED BY CONTRACTOR FROM POWER COMPANY	4	AS	\$ 4,021.36-	\$ 16,085.42 -

ITEM #	ITEM DESCRIPTION	QTY	UNIT of MEASURE	UNIT PRICE	EXTENDED PRICE
0639 2 1	ELECTRICAL SERVICE WIRE, FURNISH & INSTALL	360	LF	\$8.37 -	\$3,013.92 -
0639 3 11	ELECTRICAL SERVICE DISCONNECT, F&I, POLE MOUNT	1	EA	\$4,292.60	\$4,292.60 -
0641 2 12	PRESTRESSED CONCRETE POLE, F&I, TYPE P-II SERVICE POLE	4	EA	\$4,484.75	\$17,939.01
0646 1 11	ALUMINUM SIGNALS POLE, PEDESTAL	2	EA	\$4,487.76	\$8,975.51 -
0646 1 12	ALUMINUM SIGNALS POLE, FURNISH & INSTALL PEDESTRIAN DETECTOR POST	6	EA	\$3,727.93	\$22,367.59-
0653 1 11	PEDESTRIAN SIGNAL, FURNISH & INSTALL LED COUNTDOWN, 1 WAY	2	AS	\$993.23	\$1,986.45 -
0653 1 60	PEDESTRIAN SIGNAL, REMOVE PED SIGNAL- POLE/PEDESTAL TO REMAIN	2	AS	\$354.90-	\$709.80 -
0654 2 12	MIDBLOCK CROSSWALK: RECTANGULAR RAPID FLASHING BEACON, FURNISH & INSTALL- AC, COMPLETE SIGN ASSEMBLY- BACK TO BACK	6	AS	\$15,733.90	\$94,403.40
0665 1 11	PEDESTRIAN DETECTOR, FURNISH & INSTALL, STANDARD	2	EA	\$785.51	\$1,571.02 -
0665 1 60	PEDESTRIAN DETECTOR, REMOVE- POLE/PEDESTAL TO REMAIN	2	EA	\$177.45-	\$354.90 -
0700 1111	SINGLE COLUMN GROUND SIGN ASSEMBLY, F&I GROUND MOUNT, LESS THAN 12 SF	20	EA	\$996.45	\$19,929.00
0700 1600	SINGLE COLUMN GROUND SIGN ASSEMBLY, REMOVE	3	EA	\$354.90	\$1,064.70 -
0711 11123	THERMOPLASTIC, STANDARD, WHITE, SOLID, 12" FOR CROSSWALK AND ROUNDABOUT	442	LF	\$18.00 -	\$7,956.00 -
0711 11125	THERMOPLASTIC, STANDARD, WHITE, SOLID, 24" FOR STOP LINE AND CROSSWALK	470	LF	\$21.00 -	\$9,870.00 -
0711 11160	THERMOPLASTIC, STANDARD, WHITE, MESSAGE OR SYMBOL	2	EA	\$595.00-	\$1,190.00 -
0711 16101	THERMOPLASTIC, STANDARD-OTHER SURFACES, WHITE, SOLID, 6"	0.003	GM	\$275,000.00	\$825.00 -
0711 17 1	THERMOPLASTIC, REMOVE EXISTING THERMOPLASTIC PAVEMENT MARKINGS- SURFACE TO REMAIN	317	SF	\$10.00 -	\$3,170.00 -
0715 1 12	LIGHTING CONDUCTORS, F&I, INSULATED, NO.8 - 6	3,247	LF	\$3.03 -	\$9,835.16 -
0715 516-513	LIGHT POLE COMPLETE-SPECIAL DESIGN, F&I, POLE TOP MOUNT, WOOD, 13'	11	EA	\$8,872.66	\$97,599.22
0715 516-518	LIGHT POLE COMPLETE-SPECIAL DESIGN, F&I, POLE TOP MOUNT, WOOD, 18'	1	EA	\$9,324.71	\$9,324.71 -
0751 49	TIMBER PEDESTRIAN BRIDGE	5,472	SF	\$87.00 -	\$476,064.00
				SUB-TOTAL BID ITEMS:	\$1,598,718.05

ITEMS TO BE LOCALLY FUNDED					
ITEM #	ITEM DESCRIPTION	QTY	UNIT of MEASURE	UNIT PRICE	EXTENDED PRICE
0522 2A	CONCRETE SHARED USE PATH, 7" THICK (HEAVY DUTY) (IN LIEU OF 4" THICK)	47	SY	\$159.75	\$7,508.25 -
CITY-01	18" WAPRO STAINLESS WASTOP INLINE CHECK VALVE	1	EA	\$27,635.54	\$27,635.54 -
				SUB-TOTAL LOCALLY FUNDED ITEMS:	\$35,143.79-
				GRAND TOTAL ALL ITEMS:	\$1,633,861.84

EJCDC Exhibit No. 2 Contractor's Proposal

Not attached, on file with City of Port Orange Purchasing Department

Consisting of 66 pages

EJCDC Exhibit No. 3

ITB 25 - 13

439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) from South of Selin
Circle to Herbert Street

on file with Office of the City Clerk

Consisting of 183 pages

EJCDC Exhibit No. 3

ITB 25 - 13

439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) from South of Selin
Circle to Herbert Street

on file with Office of the City Clerk

Consisting of 183 pages

AMENDMENT NO. 1
To EJCDC Agreement dated August 19, 2025
Masci General Contractor, Inc.

THIS AMENDMENT NO. 1 TO EJCDC Agreement ("2025 Amendment") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **MASCI GENERAL CONTRACTOR, Inc.** ("Contractor") a Florida corporation with its principal place of business at 5752 South Ridgewood Avenue, Port Orange, Florida 32127. The City and the Contractor are hereinafter collectively referred to as the "Parties."

WHEREAS, on August 19, 2025, the Parties entered into an EJCDC Agreement ("Agreement"), pursuant to Invitation to Bid 25-13 ("ITB 25-13") for SJR2C Loop Trail (Spruce Creek Rd.) From South of Selin Circle to Herbert Street, with Contractor; and

WHEREAS, due to a scrivener's error, the Parties desire to amend page 1, Article 2 – The Project, Section 2.01 of the EJCDC, in the FDOT Financial Management Number written as 4398653-2-54-01, and correcting the Financial Management Number to 439865-3-54-01; and

WHEREAS, the City of Port Orange City Manager has determined that this 2025 Amendment is beneficial to the citizens of the City of Port Orange.

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

1. The foregoing recitals are true and correct and incorporated herein.
2. Page 1, Article 2 – The Project, Section 2.01 of the EJCDC, shall be deleted in its entirety and replaced with the following:

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

ITB 25-13 – 439865-3-54-01 SJR2C Loop Trail (Spruce Creek Rd.) From S. of Selin Circle to Herbert Street"

3. Contract Construction. This 2025 Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this 2025 Amendment shall be deemed valid as if an original signature was delivered. No Agreement shall be formed between Contractor and the City until both Parties have signed this 2025 Amendment.

4. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this 2025 Amendment on the day and year stated hereinafter.

Witnesses:

Beth Puma
Printed Name: Beth Puma

Vincenta Massaro
Printed Name: Vincenta Massaro

MASCI GENERAL CONTRACTOR, INC.

By: [Signature]
Leticia Maria Masci Ferreira, Vice President

If this Agreement is signed by an individual not identified as officer or authorized person of the entity in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into Agreements on behalf of the entity.

Date: 9/2/25

CITY OF PORT ORANGE

By: _____

Wayne Clark, City Manager

Date: _____



ATTEST: _____

By: _____

Robin L. Fenwick, MMC, City Clerk

Date: _____



CITY OF PORT ORANGE NOTICE TO PROCEED

Issued By: Lisa Epstein, Project Manager
Community Development
1000 City Center Circle
Port Orange, FL 32129
Ph: (386) 506-5667
Lepstein@port-orange.org

Issued To: MASCI GENERAL CONTRACTOR, INC
5752 S. Ridgewood Ave
Port Orange, FL 32127
(386) 322-4500

PROJECT TITLE: SJR2C LOOP TRAIL (SUN TRAIL) – Port Orange Segment
PROJECT NO. FDOT FPN #439865-3-54-01; City of Port Orange #CD221
CONTRACT NO. ITB #25-13
PURCHASE ORDER PO-20250608

This **Notice to Proceed** issued to your company is for the above reference project and in accordance with the Scope of Work and all terms and conditions of the agreement between the City of Port Orange and Masci General Contractor, Inc. dated August 19, 2025. The **effective date** of this **Notice to Proceed** is **Monday, October 13, 2025**, with the construction to be substantially complete in 246 days, and final completion within 270 days. We look forward to working with you on this project.

Please sign below acknowledging and agreeing to the contents of this Notice to Proceed and return a copy of this form to the address below:

Project Manager: Lisa Epstein – Project Manager
Community Development
1000 City Center Circle, Port Orange, FL 32129
386-506-5667
Lepstein@port-orange.org

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

ACCEPTANCE NOTICE:

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

Company: MASCI GENERAL CONTRACTOR, INC. This 1st day of October, 2025

By: Leticia M Ferreira Digitally signed by Leticia M Ferreira
Date: 2025.10.01 16:33:42 -04'00'

Title: Vice President

March 18, 2026

Ms. Lisa Epstein – City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Engineer's Certification of Change Order No. 1
SJR2C Loop Trail – ITB 25-13 – CD221

Lisa:

In our capacity as the CEI Engineer for the above-referenced project, this letter serves as certification and justification for **City Change Order No. 1**, which combines several contractor-submitted change orders into a single City-issued change order for execution. During construction, the contractor identified unforeseen field conditions and conflicts that they stated required modifications to the original contract documents in order to maintain constructability, safety, and compliance with applicable standards. The Contractor submitted the following change orders, which have been reviewed by the CEI team (Kimley-Horn and Associates, Inc.) and the Engineer of Record (Stanley Consultants, Inc.) and determined to be necessary for the successful completion of the project:

- **Contractor Change Order 001 – Concrete Substitutions / Additional Concrete**
This change order addresses required substitutions and additional quantities of concrete resulting from field conditions that differed from the original design plans. The revisions were necessary for structural integrity and proper installation in accordance with project requirements. This change order is associated with **RFI Nos. 10 and 11**.
Cost Impact: \$4,724.02
Time Impact: 2 calendar days
- **Contractor Change Order 003 – FPL Conduit Conflict / Drainage Revision**
This change order addresses unforeseen conflicts with existing FPL conduit that required revisions to the proposed drainage system to avoid utility interference. The modifications were necessary to maintain functionality of both the proposed improvements and the existing utility infrastructure. This change order is associated with **RFI No. 12**.
Cost Impact: \$9,494.15
Time Impact: 2 calendar days
- **Contractor Change Order 004 – Tree Removal (Trail Conflict)**
This change order addresses the removal of trees that were found to conflict with the proposed trail alignment. The removal was necessary to allow construction to proceed in accordance with the approved plans.
Cost Impact: \$3,060.00
Time Impact: 0 calendar days

*Contractor Change Order 002 related to potential replacement of existing shared use path is not included in this change order package and is under review for approval under separate cover.



The above contractor change orders have been reviewed for scope, cost, and necessity, and are hereby certified as fair and reasonable. For administrative efficiency, these items have been combined as **City Change Order No. 1**. The City's official Change Order form shall govern the approved adjustments to the contract amount and contract time and any other applicable provisions.

Additionally, the Change Order will document the adjustment to contract time associated with Holidays, weather impacts, and other applicable workdays in which the City was closed and the Contractor was unable to perform their work. Through January 2026 the accumulated Holiday/Weather Days for the project is **8 calendar days**. This time accounts for Veterans Day (11/11/2025), Thanksgiving (11/27/2025-11/28/2025), Christmas (12/24/2025-12/26/2025), New Years (1/1/2026), and Martin Luther King Day (1/19/2026).

Summary of City Change Order No. 1:

- Total Cost Adjustment: **\$17,278.17**
- Total Contract Time Adjustment: **12 calendar days**

- Original Contract Amount: **\$1,633,861.65**
- Adjusted Contract Amount: **\$1,651,139.82**
- Percentage of Contract Adjusted: **1.1%**

- Original Contract Time: **270 calendar days**
- Adjusted Contract Time: **282 calendar days**
- Percentage of Contract Adjusted: **4.4%**

Based on our review, the changes outlined herein are considered fair and reasonable and Kimley-Horn recommends the City of Port Orange approve City Change Order No. 1 to allow for proper completion of the project.

Should you require any additional information or clarification, please do not hesitate to contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Mark D. Grande, P.E.
Project Manager
P.E. #87476

March 18, 2026

Ms. Lisa Epstein – City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Engineer's Certification of Change Order No. 2
SJR2C Loop Trail – ITB 25-13 – CD221

Lisa:

In our capacity as the CEI Engineer for the above-referenced project, this letter serves as certification and justification for **City Change Order No. 2**. During construction, the contractor identified unforeseen field conditions related to the existing shared use path on Spruce Creek Road where the project improvements proposed to connect. The existing shared use path has multiple issues from cracks and breaks to slopes and joint thresholds that do not meet ADA compliance. In order to make the proposed connections per the original contract documents, modifications to the existing shared use path at each tie-in location would be required at minimum to maintain constructability, safety, and compliance with applicable standards. Replacement of the existing shared use path between new sections of path will significantly improve the overall quality and lifespan of the trail. The Contractor submitted the following change order proposal, which has been reviewed by the CEI team (Kimley-Horn and Associates, Inc.) and Engineer of Record (Stanley Consultants, Inc.) and determined to be necessary for the successful completion of the project:

- **Contractor Change Order 002 – 8' Concrete Shared Use Path – Selin Circle to Oak St.**
This change order consists of the complete costs for removal and replacement of 178 LF of the existing 8' concrete shared use path on Spruce Creek Road from the proposed trail connection locations near Selin Circle and Oak Street. Sod restoration costs are included in this change order. All unit costs submitted are consistent with the contract unit costs established.

The above contractor change order has been reviewed for scope, cost, and necessity, and is hereby certified as fair and reasonable. The City's official Change Order form shall govern the approved adjustments to the contract amount and contract time and any other applicable provisions.

Summary of City Change Order No. 2:

- Total Cost Adjustment: **\$12,044.75**
- Total Contract Time Adjustment: **5 calendar days**
- Original Contract Amount: **\$1,633,861.65**
- Previous Adjusted Contract Amount: **\$1,651,139.82**
- New Adjusted Contract Amount: **\$1,663,184.57**
- Total Percentage of Contract Adjusted: **1.8%**
- Original Contract Time: **270 calendar days**
- Previous Adjusted Contract Time: **282 calendar days**
- New Adjusted Contract Time: **287 calendar days**
- Total Percentage of Contract Adjusted: **6.3%**



Based on our review, the changes outlined herein are considered fair and reasonable and Kimley-Horn recommends the City of Port Orange approve City Change Order No. 2 to allow for the replacement of the existing shared use path within the overall project limits and proposed trail route that is currently of substandard condition.

Should you require any additional information or clarification, please do not hesitate to contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "M. Grande".

Mark D. Grande, P.E.
Project Manager
P.E. #87476

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

[illegible]

DAYS ADDED TO CONTRACT

1. Item 102-1 Maintenance of Traffic is only included for Masci's scope of work. Prime contractor to provide all MOT devices such as (i.e. Flagmen, temp construction signs, LCDs, barricades, arrow boards, message boards, off duty officers, LCNS, Pedestrian Escort, etc.) that may be required for the project.
2. Pricing does not include any additional work necessary to adhere to the FDOT index 600 drop-off criteria.
3. Pricing excludes all permits and fees, utility locations or adjustments, railroad insurance, railroad flagging, contamination removal, asphalt patching, trench cut repairs, temp. paint and RPMs
4. No Survey or As Builts included in quoted prices, Prime to provide survey as needed.
5. Masci will provide QC testing for our scope of work only; Ex.: Asphalt Operations performed by Masci.
6. The above stated exclusions may not list all items, but unless Masci's quotation specifically states a bid item, please assume that it is not included in Masci's scope of work quoted for the project.

NOTE: This proposal may be withdrawn by Masci if not signed and received in our office with 30 days of date of quote.

Estimator:

UPON EXECUTION OF THIS CHANGE ORDER BY MASCI AGENT BELOW THIS DOCUMENT BECOMES A CONTRACT.

All costs of collection shall be paid by the customer including reasonable attorney fees.

Date: _____

Title: _____

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

[illegible]

Title: _____

REQUEST FOR INFORMATION

Date: 11/13/2025

RFI No.: 010

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 15

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

Request from: Masci

Date Received: 11/13/2024

Heavy Duty Asphalt 334 SF @ \$3,034.75
Heavy Duty Concrete 334 SF @ \$5,910.75
Added cost: \$2,876.00

Description:

Sheet 15 of the plans indicates installation of an ADA mat over asphalt. Please confirm if this is the intended installation method or if a concrete base is required beneath the mat.

Additionally, the same sheet shows 16 linear feet of aluminum guard rail. Please clarify the anchoring method for this guard rail. Specifically:

- Is a concrete footer or foundation required for the aluminum guard rail installation? see FDOT Index 515-070 - Sheet 5 of 5
- If so, please provide the applicable detail or reference to the appropriate sheet or standard drawing.

REPLY REQUESTED BY:

Date Received: 11/17/2025

Response:

For the installation of the ADA mats and the Thickened edge sidewalk, please replace approximately 18 LF south of Powers Ave (starting at STA 24+28.07) and 6 LF north of Powers Ave (ending at STA 24+73.07) of Heavy Duty Asphalt Shared Use Path with Heavy Duty Concrete Shared Use Path. This change will remove approximately 334 SF of Heavy Duty Asphalt Shared Use Path and add approximately 334 SF of Heavy Duty Concrete Shared Use Path.

Attachments: FDOT Index 515-070 - Sheet 5 of 5

Description:

Response By: Karen O'Neill

Date: 11/18/2025

REQUEST FOR INFORMATION

Date: 11/13/2025

RFI No.: 011

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 14

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

old concrete quantity 148 SF (16.44 CY)
new concrete quantity 178 SF (19.77 CY)
increase in cost 19.77- 16.44 = 3.33 CY @ \$110.47 = \$ 368.233

Request from: Masci

Date Received: 11/13/2024

~~6" Thick Concrete Sidewalk
per FDOT Index 522-002
30 SF @ \$110.47
Added cost: \$3,314.10~~

Description:

Sheet 14 of the plans do not show a recently installed fiber pull box that will potentially impact final grade. Can EOR provide elevations for the concrete/ flat work for this area. Also provide a anchoring detail for guardrails..

REPLY REQUESTED BY:

Date Received: 11/17/2025

Response: The sidewalk connection at Dunlawton Avenue has been revised to avoid the Fiber junction box that was installed during construction of the shared use path project. Please see the attached 14 ROADWAY PLAN for updated alignment and the 14 ROADWAY PLAN - GRADES for the updated grades. The proposed surface was modeled to match existing grades in the areas where the trail is adjacent to existing concrete. Please see FDOT Index 515-070 for the anchoring details for the guiderail.

Attachments: 14 ROADWAY PLAN - 11-21-2025
14 ROADWAY PLAN - GRADES - 11/21/2025

Description: FDOT Index 515-070

Response By: Karen O'Neill

Date: ~~REVISED 11/26/2025~~

REVISED 12/18/2025

ERRONEOUSLY LISTED SQUARE FEET INSTEAD OF SQARE YARD FOR QUANTITIES

5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

RamonRodriguez@mascigc.com

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0110 1 1	Clearing and Grubbing	0.01	AC	\$50,000.00	\$550.00
0120 6	Embankment	6.00	CY	\$39.45	\$236.70
0400 0 11	CONCRETE CLASS NS, GRAVITY WALL INDEX 400-011 (upgrade to Scheme 2)	3	CY	\$1,532.00	\$4,596.00
	Scheme 2 footer is enlarged to 2'-0", increasing concrete and reinforcing quantities				
0430174118	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 18"SD	16	LF	\$139.77	\$2,236.32
	Pipe Delivery from supplier	1	LS	\$550.00	\$550.00
430-982-000	Miscellaneous Drainage Structure Adjustments (24" Core/Cut)	1.000	LS	\$1,325.13	\$1,325.13
	Once line items for 29 LF of 24" RCP and S-107 have been paid. They shall be turned over to the city of Port orange				
		TOTAL			\$9,494.15

Title: _____

REQUEST FOR INFORMATION

Date: 11/24/2025

RFI No.: 012

Project: SRJ2C Loop Trail

FPN: 439865

Owner: City of Port Orange

Contract No.:

Reference Dwgs.: Sheet 18

Contractor Representative: Ramon Rodriguez E.I.

Engineer of Record Firm: Stanley Group

Request from: Masci

Date Received: 11/13/2024

Description of Issue:

During layout of the proposed 24" storm sewer pipe connecting structures S-107 and S-108, a conflict was identified with existing Florida Power & Light (FPL) buried power lines/mains. These utilities were not located or shown on the contract plans. The confirmed power lines are obstructing the proposed storm sewer alignment.

Request/Question:

Please provide direction on how to proceed with installation of the storm sewer pipe in light of this conflict. Specifically:

- Should the storm sewer alignment be revised?
- Should utility relocation be coordinated with FPL?
- Are there alternative design adjustments acceptable to the Engineer/Owner?
- Additional costs not identified at this time.

REPLY REQUESTED BY:

Date Received: 11/25/2025

Response: See response on next page

Response By: Karen O'Neill

Date: REVISED 12/02/2025
Per additional MH details

We propose a new pipe configuration as shown on the attached **Revised** plan sheets. The City is currently confirming the documentation for the 10' Utility Easement that was dedicated to the City of Port Orange per The Club at Sugar Mill As-Builts (6-2-2000)

Structure S-108 will be relocated to where the existing ditch is with an invert of 3.25.

Structure S-107 is no longer needed.

The proposed pipe has been changed from 29 LF of 24" to **8 LF of 18"**.

The existing 24" pipe is still proposed to be removed.

We believe this will avoid the FPL utilities that were encountered in the field, while providing a positive outfall for the existing ditch south of the Sugar Mill development.

The existing manhole at STA. 29+05.23 will need to be **cored or cut** into to provide the 18" pipe connection at elevation **+2.42'**.

After receiving more detailed information on the existing manhole please see the revised text in red above, the revised plan sheets 16 and 18 dated 12/2/2025, and the additional information provided for coring or cutting into the exiting manhole and additional details to the design of the gravity wall that will need to be C.I.P. around the existing manhole.

Tie in to Existing Manhole

Please see the attached Hole Placement Detail for further clarifications. The top of the hole, either cored or cut into the existing MH, will need to be no closer than 6" below the bottom of the top of the MH slab. The hole should be positioned in the center of the 5' width of the MH to maintain clearances to the MH corners. The Contractor must try to make the hole as small as possible to ensure the integrity of the existing structure. The Contractor must employ construction methods that will not produce damaging vibration, soil movement, soil loss, or instability of the existing MH. The Contractor is strongly encouraged to take their time to prevent damage to the existing MH. Any reinforcement cut during the construction should be properly sealed. The Contractor is to monitor the existing MH for cracking of the concrete and shifting of the box. Inspect the condition of the MH and all existing cracks prior to construction, during construction, and after construction is complete. Make sure no cracks are forming during the process of opening the side of the box. Upon either detecting movement of 0.010 feet or damage to the structure, immediately stop construction operations affecting the structure, backfill any open excavations, notify the EOR and City, and submit a corrective action plan for acceptance by the EOR and City.

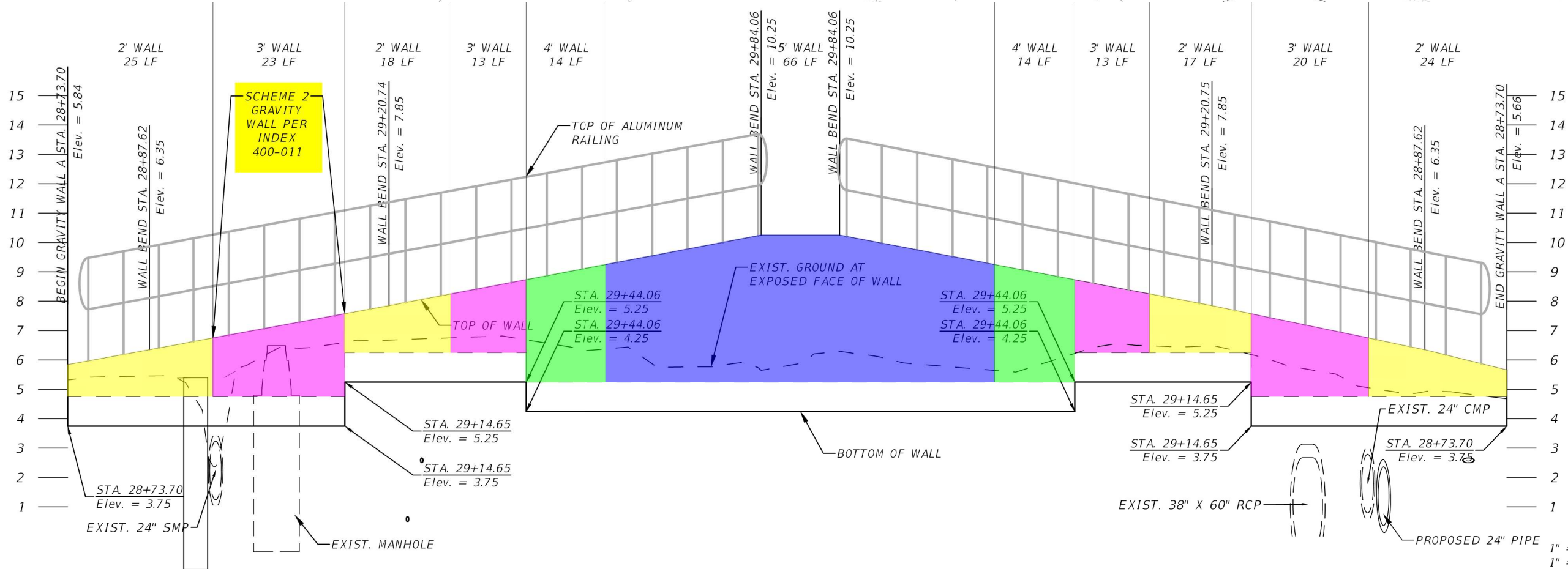
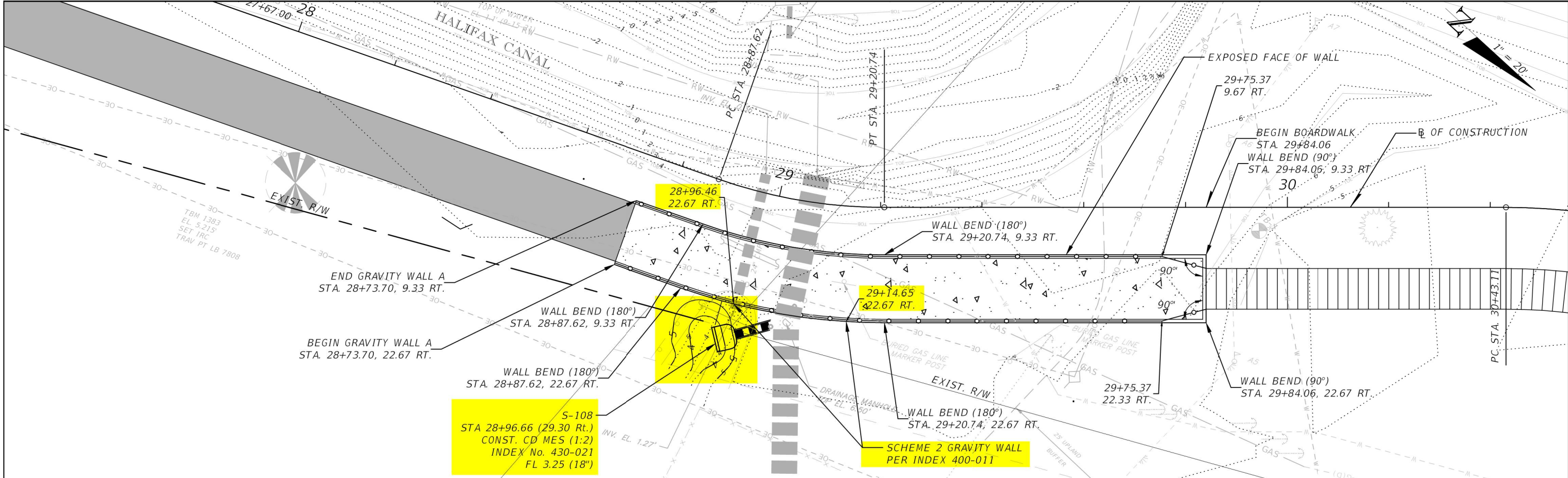
Gravity Wall

The 3' wall height from STA 28+96.46 to STA 29+14.65 adjacent to the existing MH will need to be changed from Scheme 1 to Scheme 2 per the FDOT Index 400-011. The wall will need to be formed around the existing MH and the contractor will need to provide an expansion joint between the concrete gravity wall and concrete MH. We understand that the FDOT index 400-011 Note 6 states to provide 2" PVC Drain Pipe (Sch. 40) at 10 ft. max spacing, however, we believe that placing a 2" PVC just before and one just after the existing MH will meet the drainage intents of this specification.

COSTS:

Bid Item Number	Description	Quantity	Unit	Unit Cost	Amount
0110 1 1	CLEARING & GRUBBING	0.011	AC	\$50,000.00	\$550.00
0120 6	EMBANKMENT	6	CY	\$39.45	\$236.70
0400 0 11	CONCRETE CLASS NS, GRAVITY WALL INDEX 400-011	CY	2.3	\$1,532.00	\$3,523.60
0430174118	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 18"SD	8	LF	\$139.77	\$1,118.16
0430174124	PIPE CULVERT, OPTIONAL MATERIAL, ROUND, 24"SD	-29	LF	\$165.58	(\$4,801.82)
					\$626.64

Please provide the additional costs you require to core the existing manhole.



REVISIONS	
DATE	DESCRIPTION



**CITY OF
PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

MERLYNN O. ANDERSON, P.E.
P.E. LICENSE NUMBER 83096

STANLEY CONSULTANTS, INC.
80 SPRING VISTA DRIVE
DEBARY, FL 32713

SJR2C LOOP TRAIL FROM SOUTH OF SELIN CIR TO HERBERT ST		
ROAD	COUNTY	FINANCIAL PROJECT ID
SPRUCE CREEK RD	VOLUSIA	439865-3-54-01

GRAVITY WALL PLAN & PROFILE
WALL A
12/02/2025-REVISED PIPE

SHEET NO.
18

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.



5752 S. Ridgewood Ave. Port Orange, FL 32127
Tel. (386) 322-4500 : General Fax (386) 322-4600

Quote To: City of Port Orange
Lisa Epstein
lepstein@port-orange.org
(386) 506-5667

Project Name: **SJR2C LOOP TRAIL (SUN TRAIL)**
Contact: Leo Masci and/or Heather Knight
leomasci@mascigc.com
RamonRodriguez@mascigc.com

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0110 23	Tree Removal (already removed, tree fell over)	1	EA	\$1,540.00	\$1,540.00
0110 23	Tree Removal Tree encroaching trail less than 24" (Not Yet Removed)	1	EA	\$1,540.00	\$1,540.00
		TOTAL			\$3,080.00

DAYS ADDED TO CONTRACT

1. Item 102-1 Maintenance of Traffic is only included for Masci's scope of work. Prime contractor to provide all MOT devices such as (i.e. Flagmen, temp construction signs, LCDs, barricades, arrow boards, message boards, off duty officers, LCNS, Pedestrian Escort, etc.) that may be required for the project.
2. Pricing does not include any additional work necessary to adhere to the FDOT index 600 drop-off criteria.
3. Pricing excludes all permits and fees, utility locations or adjustments, railroad insurance, railroad flagging, contamination removal, asphalt patching, trench cut repairs, temp. paint and RPMs
4. No Survey or As Builts included in quoted prices, Prime to provide survey as needed.
5. Masci will provide QC testing for our scope of work only; Ex.: Asphalt Operations performed by Masci.
6. The above stated exclusions may not list all items, but unless Masci's Quotation specifically states a bid item, please assume that it is not included in Masci's scope of work quoted for the project.

NOTE: This proposal may be withdrawn by Masci if not signed and received in our office with 30 days of date of quote.

Date: _____

UPON EXECUTION OF THIS CHANGE ORDER BY MASCI AGENT BELOW THIS DOCUMENT BECOMES A CONTRACT.

In the event that the amount herein shown is not paid when due, interest at the prime rate plus 10% per annum shall accumulate on the total due.

All costs of collection shall be paid by the customer including reasonable attorney fees.

Date: _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B6b) Approval of Contract with GSM Engineered Fabric, LLC for Belt Filter Press Repairs at the Water Reclamation Facility in the amount of \$27,934.00

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure
6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve a Contract with GSM Engineered Fabric, LLC for repairs of the Belt Filter Presses at the Water Reclamation Facility in an amount not to exceed \$27,934.00 and authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY:

The City's Water Reclamation Facility treats approximately 7 million gallons of wastewater each day. As part of this process, biosolids are produced and must be properly managed. The facility uses five belt filter presses to remove water from these materials, generating about 30 tons of biosolids daily.

The existing belt filter presses are more than 30 years old and have previously undergone a full rebuild. Several components now require replacement to ensure the equipment continues to operate reliably and efficiently.

Due to the specialized nature of this equipment, Staff was unable to obtain multiple quotes for the needed repairs on the wash boxes, gasket seals, and various other components on the belt filter presses. GSM Engineered Fabrics has extensive experience with these specific systems and has successfully completed similar maintenance and repair work for the City in the past. Staff has confirmed that the pricing is in line with similar specialized equipment vendor rates for wastewater equipment repairs, and the project funds are included in the current year's repair and replacement (R&R) funds.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	GSM Engineered Fabric LLC -	GSM Engineered Fabric LLC - Standard
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	Standard Contract for Services	Contract for Services.pdf
2.	Quote_QUO5354_1773753023145	Quote_QUO5354_1773753023145.pdf

Steve Parnell	Created/Initiated - 03/18/2026
Christopher Wall	Approved - 03/18/2026
Steve Parnell	Approved - 03/23/2026
Sue Wang	Approved - 03/23/2026
Matthew Jones	Approved - 03/24/2026
Wayne Clark	Final Approval - 03/24/2026



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Sole Source Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2026, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **GSM ENGINEERED FABRICS, LLC.**, ("Contractor"), a foreign limited liability company whose principal address is 2015 Gateway Park Court, Kingsport, Tennessee 37663. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide certain materials for the upgrade and repair of certain devices at the City's Reclaim Plant as more particularly described in the Quote dated March 17, 2026, attached hereto as Exhibit "1".
- (b) The time, manner and place for performance of such services shall be:

Term: This Contract shall become effective on the last date the Contract is signed by the Parties and shall continue for a period of one-year ("Term").

Manner and Place: The work shall be performed in accordance with and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Contractor shall not deliver goods or services without a written purchase order, signed by an authorized agent of the City of Port Orange. Contractor shall cause goods to be delivered to the City in the most expedient, cost-effective manner. All items shall be shipped to the City of Port Orange designated facility identified in each purchase order, FOB Destination. Contractor shall bear the risk of loss for goods delivered under this Contract from the time of shipping to the City until delivered at the destination specified by the City for delivery.

Time and Essence: Contractor acknowledges that time is of the essence for this Contract.

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be in the form of a written Purchase Order(s) issued and executed by the City. The City objects in advance to the inclusion of any additional terms and conditions proposed by the Contractor in its acceptance or acknowledgement for the purchase of any goods, work, or services. The inclusion of additional terms and conditions, or reference thereto, by the Contractor in periodic written quotes shall be of no significance, shall not be binding on the City, and the City's acceptance of the Contractor's good, work, or services shall not be deemed as acceptance of such terms. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Exhibit "1" attached hereto, subject to a limit not to exceed Twenty-Seven Thousand Nine Hundred Thirty-Four and 00/100 Dollars (\$27,934.00). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Administration. The Public Utilities Director, Steve Parnell, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

4. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.

5. Termination for Convenience of the City

(a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall determine that such termination is in the best interest of the City.

(b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

(c) Upon receipt of such Notice, the Contractor shall:

- (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
- (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
- (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
- (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and
- (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

(d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director.

(e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Finance Director shall pay the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

- (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

- (1) the cost of work performed or supplies delivered;
 - (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;
 - (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.
- (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

6. Termination for Convenience for Subcontractors. In accordance with the termination for the convenience of the City provision of this contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

7. Termination for Default. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

8. Examination of Records

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

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

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

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

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

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

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

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

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

10. Termination for Non-Appropriation of Funds

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

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

11. Insurance. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

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

Standard Insurance Requirements											
	Insurance	Standards	Additional Requirements								
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr><tr><td colspan="2">Contracts over \$20 million To Be Determined by the City.</td></tr></table>	<u>Contract Amount</u>	<u>Limits</u>	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.
<u>Contract Amount</u>	<u>Limits</u>										
Up to \$10 million	Statutory/\$500,000										
\$10 - \$20 million	Statutory/\$1,000,000										
Contracts over \$20 million To Be Determined by the City.											
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.								

☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000	
☐	Umbrella Policy	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

12. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods," as defined therein.

13. Assignability of Contract. Neither this contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written approval of the City Council.

14. Modifications or Changes to this Contract

(a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

(c) Contractor need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

(d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

15. Sovereign Immunity. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract

to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

16. Warranties. Contractor shall provide manufacturer's warranty. Contractor shall remedy a warranty claim by replacement or repair and shall warrant the product for one-year after replacement or repair.

Contractor further warrants that Contractor has title to the supplies provided, and that the supplies are free and clear of all liens and encumbrances, and security interests. All warranties made in this Contract, together with services, warranties and guarantees, shall run to the City and its successors and assigns.

17. Additional Warranties. Contractor further expressly warrants that materials and workmanship are warranted from defect for a one-year period. This is a minimum acceptable warranty.

18. Inspection

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and their products) shall be subject to inspection and test by the City, to the extent practicable at all times and places including the place of manufacturer, and in any event prior to acceptance.

(b) In the event that supplies or lots of supplies are alleged defective or not in conformity with the requirements of this Contract, the City shall have the right to request replacement, credit, or repair of such item(s). Contractor reserves the right to inspect any such alleged defective or nonconforming items. Upon Contractor's inspection and confirmation of valid warranty claim, Contractor will replace, credit, or repair the subject product(s). Contractor will provide a written explanation to the City within ten (10) business days in the event that the Contractor disputes the validity of the claim. Contractor shall pay the cost of freight (both ways) in the event of a valid warranty claim.

(c) The inspection and test by the City of any supplies or lots thereof does not relieve Contractor from any responsibility regarding defects or other failures to meet the Contract requirements, which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

19. Liability for Loss or Damage. To the extent damages or losses are caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, or his/its agents, servants and employees, Contractor shall be liable for loss of, or damages to, City property and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses including reasonable attorney's fees by reason of suit or action resulting from the performance of the Contract by Contractor, his/its agents, servants and employees. Except as expressly stated herein, or otherwise agreed by Contractor in writing, Contractor's aggregate liability shall be limited to the purchase order price.

20. Non-discrimination. During the performance of this Contract, Contractor agrees as follows:

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

discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

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

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

21. Disputes. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin L. Fenwick, MMC. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

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

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

24. Additional Provisions. This Contract includes all additional provisions as may have been outlined in written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

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

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

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

Copy to: City of Port Orange
Attention: Steve Parnell, Public Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: GSM Engineered Fabrics, LLC
Attention: Scott Cooper, Managing Member
2015 Gateway Park Court,
Kingsport, Tennessee 37663
(423) 348-0954 – Telephone

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

27. Contract Construction

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

28. Authority to Sign. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

[Remainder of this page intentionally left blank]

Witnesses:

GSM ENGINEERED FABRICS, LLC

Printed Name: _____

By: _____

Scott Cooper, Managing Member

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

Printed Name: _____

Date: _____

Please note that at this time the City does not accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By: _____
Scott Stiltner, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT “1”

Contractor's Quote

Consisting of 1 Page



GSM Engineered Fabrics LLC
2015 Gateway Park Court
Kingsport TN 37663
United States
(423) 348-0954

Quote
#QUO5354
3/17/2026

Terms	Net 45
Lead Time	3-4 weeks ARO
Incoterm	FOB
Location	Destination
Sales Rep	Eric Helin
Email	eric@gsmfiltration.com
Shipping	Best Way

Notes
Replacement Belts & Shower Parts

Bill To
Accounts Payable City of Port Orange PO Box 291759 Port Orange FL 32129-1759 United States

Ship To
Public Utilities - Wastewater City of Port Orange 817 Oak Street Port Orange FL 32127 United States

Item	Quantity	Rate	Amount
Shower Valve Seal Kit, 1-1/2 and 2 Bars	10	\$58.00	\$580.00
Shower Brush Assembly Kit, 1.5" header 2.0m	2	\$649.00	\$1,298.00
Shower Box Lower Seal Conversion, includes welding seal rails onto existing shower covers, new slide on 3" molded seals.	10	\$944.00	\$9,440.00
Upper Shower Box Seal Conversion includes welding seal rails onto existing shower covers, new slide on 3" molded seals.	10	\$893.00	\$8,930.00
Press belt, GSM 62-350 - 2.2M wide by 15.7M long with heat sealed and doped edges. 8 clips/in. White belting material	3	\$1,255.00	\$3,765.00
Press belt, GSM 62-350 - 2.2M wide by 16.4M long with heat sealed and doped edges. 8 clips/in. White belting material	3	\$1,307.00	\$3,921.00

Subtotal	\$27,934.00
Total	\$27,934.00

Quotes are valid for 30 days. Major credit cards accepted with a 4% transaction fee. This order is subject to and shall be governed exclusively by GSM's Standard Terms and Conditions, which can be viewed by contacting sales@gsmfiltration.com. This quote includes duties and tariffs in effect at the time of quote. GSM reserves the right to pass on some or all additional costs that may be imposed including new or increased tariffs, duties, or surcharges incurred before final shipment.



GSM Engineered Fabrics LLC
2015 Gateway Park Court
Kingsport TN 37663
United States
(423) 348-0954

Quote
#QUO5354
3/17/2026

Terms	Net 45
Lead Time	3-4 weeks ARO
Incoterm	FOB
Location	Destination
Sales Rep	Eric Helin
Email	eric@gsmfiltration.com
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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B6c) Approval of Amendment No. 1 to the J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing Contract for Wrecker Services

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Amendment No.1 to renew the Wrecker Service Agreement with J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing

SUMMARY:

The Wrecker Service Agreement between the City of Port Orange and J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing, originally executed on April 15, 2025, is set to expire on May 9, 2026.

The agreement includes three one-year renewal options, each subject to review and approval by City Council. This item represents the first of those renewal options.

In addition, this item includes Amendment No. 1 to the agreement. The amendment updates Exhibit A by replacing the current version, established under Resolution No. 19-15, with the revised provisions adopted under Resolution No. 26-19, contingent upon approval of that resolution, which is also on this agenda. The revision to Exhibit A includes updated tow rates for non-consensual and trespass tows, as well as revised vehicle weight classifications. These changes align the tow rates and weight categories with those adopted by the County and many municipalities within Volusia.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	First Amendment to Wrecker Service Agreement - 1st Ext and Update Rates	First Amendment to Wrecker Service Agreement - 1st Ext and Update Rates.docx
2.	EXECUTED J&A Balboa Enterprises, Inc. dba Arrow Service & Towing Wrecker Service Agreement_Markup	EXECUTED J&A Balboa Enterprises, Inc. dba Arrow Service & Towing Wrecker Service Agreement_Markup.pdf

3.	Affidavit for Human Trafficking	Affidavit for Human Trafficking.pdf
Eric Fisher	Created/Initiated - 03/13/2026	
Manuel Marino	Approved - 03/17/2026	
Sue Wang	Approved - 03/17/2026	
Matthew Jones	Approved - 03/26/2026	
Wayne Clark	Final Approval - 03/26/2026	

FIRST AMENDMENT TO WRECKER SERVICE AGREEMENT

This First Amendment to Wrecker Service Agreement (this "Amendment") is entered into this ____ day of _____, 2026, by and between the City of Port Orange, a municipal corporation, with its principal address at 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing, a Florida corporation, located at 541 Carswell Avenue, Holly Hill, Florida 32117 (the "Towing Company"), in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

WHEREAS, the parties entered into a Wrecker Service Agreement on April 15, 2025, which is set to expire on May 9, 2026 (the "Agreement"); and

WHEREAS, the Agreement provides for three extension options of 12-months each;

WHEREAS, the parties wish to exercise the first of the 3 extensions beginning on May 10, 2026 and ending on May 9, 2027 at 11:59 p.m.; and

WHEREAS, the parties also wish to update maximum tow rates permissible under this Agreement.

NOW, THEREFORE, this First Amendment to Wrecker Service Agreement ("Amendment") is entered into by the parties modifying the Agreement as follows:

1. In accordance with Section 4.b. of the Agreement, the parties hereby agree to exercise the first of three 12-month extension periods. This first extension period shall commence on May 10, 2026 at midnight and shall end on May 9, 2027 at 11:59 p.m.
2. Section 5.a. of the Agreement is hereby amended to read as follows:

The Towing Company shall not charge for towing or storage of any vehicle that is the subject of a non-consensual tow or trespass tow originating within the City of Port Orange in excess of the maximum rates as established by Resolution of the City Council of the City of Port Orange, No. 26-19 (a copy of the Resolution is attached as Exhibit "A"). The maximum rates set forth herein are subject to amendment at any time by Resolution of City Council.

3. Exhibit "A" of the Agreement is hereby replaced in its entirety by the Exhibit "A" attached hereto this Amendment.

4. All terms and conditions set forth in the Agreement that are not expressly amendment by this First Amendment to Wrecker Service Agreement shall remain in full force and effect. In the event of conflict between the terms and conditions in this First Amendment to Wrecker Service Agreement and the Agreement, the terms and conditions of this First Amendment to Wrecker Service Agreement shall control.

Witnesses:

TOWING COMPANY

Printed
Name: _____

Printed
Name: _____

By: _____

Printed Name/Title: _____

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

Date: _____

CITY OF PORT ORANGE

By: _____
Scott Stiltner, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT A

MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES

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

1. Towing vehicles, Class A (GVWR at 5,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be:
 - Trespass Tow (flat rate) \$135.00
 - Nonconsensual tow (flat rate) \$150.00
2. Towing vehicles, Class B (GVWR at 6,000lbs or more but less than 15,000lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length), shall be:
 - Trespass Tow (flat rate) \$300.00
 - Nonconsensual tow (flat rate) \$350.00
3. Towing vehicles, Class C (GVWR at 15,001 or more pounds, but less than 25,999lbs or vehicle carrying a vessel more than 22 feet in length), shall be:
 - Trespass Tow (flat rate) \$450.00
 - Nonconsensual tow (flat rate) \$500.00
4. Towing vehicles, Class D, greater than 26,000lbs GVWR shall be:
 - a. Trespass Tow (flat rate) \$600.00
 - b. Nonconsensual Tow (flat rate) \$650.00
5. Innocent Owner fee (See Sec. 2(h) of the Wrecker Service Agreement) \$75.00
6. If a tarp is required, a flat fee of: \$15.00
7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: \$37.50

8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows, (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:

a) Class A	\$35.00
b) Class B	\$70.00
c) Class C	\$110.00
d) Class D	\$145.00

9. Services charges

a) Wrecker on-scene and owner arrives:	\$25.00
b) Wrecker not on scene and owner arrives:	No charge

10. Storage Rates per day. A “day” as defined in this fee schedule shall be a rolling 24-hour period commencing at the time the vehicle arrives at the tow yard.

a) Any vehicle at compound under twelve (12) hours:	No charge
b) Class A:	
• Outside Storage	\$35.00
• Inside Storage	\$40.00
c) Class B	
• Outside Storage	\$50.00
• Inside Storage	\$55.00
d) Class C	
• Outside Storage	\$75.00
• Inside Storage	\$80.00
e) Class D	
• Outside Storage	\$80.00
• Inside Storage	\$85.00

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

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

B. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or \$150.00, whichever is less.

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

- a) Mileage
- b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
- c) Time spent at the scene of the tow, other than those specified in this schedule
- d) Release fees during normal business hours (Monday—Friday, 8:00 a.m.—6:00 p.m.);
- e) Access fees, labor fees, administrative fees or any other charges or fees not specifically mentioned in this fee schedule to allow the owner or the owner's representative to remove personal property or examine the vehicle both during or after business hours with the exception of the \$35.00 after business hour access fee stipulated in item 12.
- f) Yard fees, labor fees, administrative fees, set-out fees (sometimes referred to as *Secondary Tow*), or gate fees or any other charges or fee's not specifically mentioned in this fee schedule for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area both during or after business hours with the exception of the \$35.00 after business hour release fee stipulated in item 12.
- g) Fuel surcharge fees
- h) Storage for the first twelve hours

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into this 15th day of April, 2025, by and between the City of Port Orange, Florida, a municipal corporation, located at 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as "City," and J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing, a Florida Corporation, with a principal address of 541 Carswell Avenue, Holly Hill, Florida 32117-4411, hereinafter referred to as "Towing Company," in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

WITNESSETH

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

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

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

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

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

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

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

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

- a. When so authorized by a representative of the City, the Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City of Port Orange.
- b. When authorized by a representative of the City, the Towing Company shall provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of Chapter 70 or other applicable provisions of the Code of the City of Port Orange covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer, from the point of origin to the place of business of the Towing Company, and provide for the towing and storage of any vehicle or trailer from the scene of an accident to a location within the City, as designated by the owner of the vehicle (which may be a place of business other than the place of business of the Towing Company).
- c. When authorized by a representative of the City, the Towing Company shall tow, service, and/or provide temporary storage for the following vehicles at no charge to the City: (1) Police Department or Fire Department vehicles, owned or leased; (2) vehicles seized under the Florida Contraband Forfeiture Act, Chapter 932, Florida Statutes; and (3) Vehicles initially towed to the police department or city owned impound yard that are held for evidence to include TH1 vehicles. If one of the vehicles listed in this subsection (2) or (3) above is subsequently released by an authorized representative of the City, the Towing Company will tow the vehicle to its storage yard within 24 hours. Under these circumstances, the owner of the vehicle shall only incur a single flat-rate tow, and shall not be responsible for the initial tow to the police department or city-owned impound. Likewise, the owner of the vehicle shall not incur storage fees unless or until the vehicle has been moved to the Towing Company's storage yard.

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

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

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

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

- d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company.
- e. The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel shall be subject to call at any and all times. The Towing Company further guarantees that, for all emergency response calls, it shall be at the requested location within the City limits within twenty (20) minutes from the time the Towing Company, its representative, or answering service receives a call requesting that a wrecker be dispatched. The time shall not exceed twenty (20) minutes even during special times (bike week, speed week, spring break, etc.) Wrecker vehicles shall not be parked at private residences within the municipal boundaries of the City of Port Orange. A call for emergency response shall include existing or potential conditions at a scene requiring that vehicles be removed and or roadways cleared as soon as possible in the judgment of the requesting police officer.
- f. The Towing Company shall answer expeditiously all calls from the Port Orange Police Department, or other City representative, for on-scene service at accidents and shall immediately remove all debris and obstructions caused by accidents even if actual towing is not required (clean-ups only).
- g. Upon request, the Towing Company shall provide the Port Orange Police Department with reasonable assistance in the examination of vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the police.
- h. An "Innocent Owner's" vehicle may be towed and stored as a result of a crime. The Chief of Police or his designee shall identify these vehicles to the Towing Company. An "Innocent Owner" is an owner or other person authorized to possess the vehicle who is not the perpetrator of a crime or civil infraction. "Innocent Owner" vehicles include, but are not limited to, the

following:

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

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

- i. If a victim meets the definition of an "Innocent Owner" and has no insurance or has a deductible of seventy-five (\$75.00) dollars or more, the Towing Company shall charge the "Innocent Owner" a fee not to exceed seventy-five (\$75.00) dollars. The Towing Company can charge additional costs to the "Innocent Owner's" insurance carrier or to some other insurance company who is liable for those costs, but in no event will the "Innocent Owner" be responsible to pay more than seventy-five (\$75.00) dollars out-of-pocket for the cost of towing and the first seventy-two (72) hours of storage. The rate for subsequent storage shall be as stated in Section 5 (Rate Charged Owners and the City). The "per tow" fee shall not apply to "Innocent Owner" tows.
- j. All services rendered by the Towing Company under this Section 2 shall be at no expense to the City, unless specifically provided otherwise.

3. Payment to the City

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

4. Term

- a. The term of this Agreement shall begin May 10, 2025 at midnight, and end on May 9, 2026 at 11:59 p.m., unless extended.
- b. Extension - The City shall have the option of extending this Agreement for three (3) consecutive twelve-month periods: (1) The first extension period beginning on May 10, 2026 at midnight, and ending on May 9, 2027 at 11 :59 p. m.; (2) The second extension beginning on May 10, 2027 at midnight, and ending on May 9, 2028 at 11 :59 p.m.; and (3) The third extension period beginning on May 10, 2028 at midnight, and ending on May 9, 2029 at 11 :59 p.m.
- c. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call with one of its own wreckers, it is still responsible for providing a wrecker during the term of this Agreement. It may utilize a wrecker from any other wrecker company licensed in the City, the County, or any other municipality located in Volusia County. In such cases, the substitute wrecker shall comply with the terms agreed upon herein.

5. Rate Charged Owners and the City

- a. The Towing Company shall not charge for towing or storage of any vehicle that is the subject of a non-consensual tow or trespass tow originating within the City of Port Orange in excess of the maximum rates as established by Resolution of the City Council of the City of Port Orange, No. 19-15(a copy of the Resolution is attached as Exhibit "A"). The maximum rates set forth herein are subject to amendment at any time by Resolution of City Council.
- b. All limitations contained herein on the rate or fee that may be charged by the Towing Company for services contemplated by this Agreement shall be inclusive of any applicable taxes including but limited to sales tax. By way of example, if the towing charge for a "Class A" vehicle is limited to a maximum of \$125.00, then the service charge invoiced by the Towing Company shall not exceed \$125.00 inclusive of tax. Assuming that sales tax is 6.5% of the sale price, the maximum the Towing Company would be able to charge in this example would be \$117.37 for the service and an additional \$7.63 for the sales tax totaling \$125.00. This limitation in no way relieves the Towing Company from collecting and remitting all applicable taxes to the appropriate taxing authorities.

- c. The City shall not be responsible for any fees or charges resulting from nonpayment by the owner of the vehicle being towed.
- d. Charging rates in excess of the legal maximum rate, shall be considered a breach of this Agreement and shall be grounds for termination as provided in Section 24.
- e. The rates for towing/servicing of City owned/leased vehicles shall be as outlined previously herein at Section 2.c. The City shall not be charged for any services rendered to it under this Agreement except as specifically provided under this Agreement.
- f. Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and City shall surrender all salvage rights to the vehicle to Towing Company and shall retain no liens upon the vehicle.
- g. The services specified in Section 2 of this Agreement shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City. The City, in such a case, shall notify the Towing Company of the error as soon as practicable and shall not be responsible for payment of towing charges or storage costs.
- h. One day of storage shall equal twenty-four (24) hours at the storage facility except that the first twelve (12) hours of storage shall be provided free of charge to the customer. On the first day of storage only, a vehicle that is stored at the storage facility between twelve (12) hours and twenty-four (24) hours shall be charged for one (1) day of storage. Thereafter, the customer may be billed for an additional day of storage for each twenty-four (24) hour period the vehicle remains in storage at the storage facility beyond the first twenty-four (24) hours of storage. By way of example, a vehicle that is at the storage facility for forty-seven (47) hours shall be charged for one (1) day of storage, while a vehicle that is at the storage facility for forty-nine (49) hours shall be charged for two (2) days of storage.
- i. Acceptable forms of payment shall include any two of the following groupings:
 - 1. Cash, cashier's check, money order, or traveler's check;
 - 2. Bank, debit, or credit card; or
 - 3. Mobile payment service, digital wallet or other.

6. Salvage Rights

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

7. Storage Facilities and Office

- a. The Towing Company shall maintain an office and a storage garage and/or outside storage facility complying with applicable building, zoning and land use regulations. Such storage facility shall:
 - (1) Contain a minimum of one hundred (100) spaces in an area which is completely secured and fenced at all times.
 - (2) Have available a minimum of two (2) spaces inside a building affixed to a permanent foundation for storing vehicles which require police processing. Moveable storage facilities are not acceptable. These spaces shall be maintained to provide protection from the weather and security to preserve the evidence and legal chain of custody for vehicles which require police processing. These spaces shall consist of sufficient space and access for police processing of a vehicle stored therein.
 - (3) Be located within a **seven (7) mile radius** from the City of Port Orange limits, on the same premises as the office.
- b. The Towing Company shall own or lease the property where the office and storage facility are located. In the event that the property is leased, the term of said lease shall be not less than the term of this Agreement or any extension thereof as set forth in Section 4. The Towing Company shall provide a copy of the current lease or deed for prequalification and upon request by the City and upon any extension of the Agreement by the City. The Towing Company shall furnish copies of subsequently effective leases and deeds to the City and shall notify the City within three (3) business days upon receiving notice of cancellation, termination, or non-renewal of any lease or any change in ownership. The City reserves the right to terminate this Agreement in the event of expiration, cancellation, termination, or non-renewal of any lease for the property or any change in ownership.
- c. The Towing Company shall have an employee on duty at said storage facility from 8:00 A.M. to 6:00 P.M. Monday through Friday, excluding legal holidays and shall have an employee available on-call for Police Department access

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

- d. The Towing Company shall prominently post a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request from the owner, lienholder, insurance company representative, or their agent to open the site to redeem a vehicle or the personal property therein, the Towing Company shall return to the site within one hour for redemption of the vehicle or return of personal property therein. Upon payment of the authorized towing and storage fees, the vehicle shall be released to the owner or authorized representative immediately whenever possible, but in no event more than 30 minutes after an acceptable method of payment is made.
- e. The Towing Company must release to the renter of a rental vehicle or vessel all personal property belonging to the renter which is not affixed to the rental vehicle or vessel within one hour after the renter's arrival.
- f. An employee of the Towing Company shall be on call twenty-four (24) hours a day and able to respond to any call with arrival at the requested location within twenty (20) minutes.
- g. Storage facilities shall be in compliance with all state, local and federal regulations. The facility shall be free from trash, rodents, insects and any other cause for contamination of vehicles. The facility shall have comprehensive security to protect property and public that enters the premises. Failure to maintain a clean, safe and secure facility, in the sole discretion of the Chief of Police, shall subject this Agreement to termination as provided herein at Section 24.
- h. Storage facilities shall be subject to inspection upon 24 hours notice by the City and shall be required to obtain approval from the City prior to the award of Agreement or any extensions thereto. Storage facilities shall be subject to periodic inspections at any time by the Chief of Police or his designee during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement.
- i. Vehicles that have been marked "HOLD" for investigative or forfeiture purposes by the Police Department shall be held at the storage facility at no charge to the City for up to 5 days, excluding weekends and holidays, unless an extension is authorized in writing, to properly process the vehicle and

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

8. Wrecker Equipment and Wrecker Company Personnel

- a. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services specified in this Agreement. The wreckers shall include: three (3) Class "A" wreckers, one (1) of which shall have four-wheel drive; and one (1) Class "C" wrecker. The wreckers of the Towing Company shall meet the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as the same now exists and as may be amended from time to time. A copy of said Rule, as it currently exists, is attached hereto as Exhibit "B", and incorporated by reference herein.
- b. No employee or agent of the Towing Company who provides services to the City under this Agreement shall have been:
 - (1) Convicted of any felony within the last ten (10) years.
 - (2) For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of

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

- c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.
- d. Prior to any extension of this Agreement and within five business (5) days of hiring any new employees, the Towing Company shall provide written notice to the Police Department of the names, addresses and drivers license numbers of all new employees, owners, partners or agents of the Towing Company.

9. Telephone Communications

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

DIRECT LINE _____
ON-CALL Phone _____

10. Non-Exclusiveness of Service

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

11. Benefits from Repairs

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

terms of payment therefor.

12. Liability of Towing Company

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

13. Personal Property in Vehicles

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

14. Release of the Vehicle

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

number; or

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

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

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

15. Posting Charges and Rate Sheets

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

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

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

16. Itemized Statements

- a. Should any owner, lienholder, insurance company, or their agent entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner, lienholder, insurance company, or their agent with an itemized statement of all charges related to the towing and storage of such vehicle. Such statement shall be provided free of charge.
- b. An itemized statement must be produced and be available to the vehicle or vessel owner, lienholder, insurance company, or their agent no later than one business day after:
 - The tow is completed; or
 - The towing-storage operator has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing-storage operator to complete the tow and recovery.

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

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

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

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

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

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

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

17. Indemnification

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

18. Insurance

- a. Required Insurance:

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

following types and amounts of insurance:

(1) Workers' Compensation Insurance:

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

- (2) Garage-keeper's policy. A garage-keeper's legal liability and direct primary policy covering fire, theft, vandalism, and other insurable perils in the minimum amount of \$75,000.00, and a per-vehicle deductible not exceeding \$1,000.00.
- (3) On Hook/Cargo liability policy with a minimum limit of \$75,000.00 and a deductible not exceeding \$1,000.00 per towing vehicle.
- (4) Automobile liability policy, covering the operation of wrecker's business, equipment, and vehicles with a combined single limit for bodily injury and property damage of no less than \$1,000,000.00.
- (5) General liability policy. A general liability policy, covering the operation of wrecker's business, equipment and vehicles, with a combined single limit for bodily injury and property damage of no less than \$1,000,000.00.
- (6) The above insurance coverage shall name the City of Port Orange as additional insured, with the exception of Workers' Compensation Insurance.

b. Proof of Insurance

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

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

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

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

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

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

19. Records, Books and Payment

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

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

- (1) Call date and time, dispatch time, arrival time, hooked, dropped and cleared time, where the vehicle was towed from; the date and time towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date and time the vehicle was released or disposed of; and all correspondence and documents sent or received concerning said vehicle, as required by this Agreement; and
- (2) All notice publications and certified mailings, the purchase price of any unclaimed vehicle or vessel sold, the names and addresses of persons to which vehicles or vessels were released, the names and addresses of vehicle or vessel purchasers, all fees imposed under s. 713.78, F.S.

20. Right to Cancel Service Call

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

21. Compliance with Laws and Rules

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

22. Surety Performance Bond

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

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

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

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

23. Late Response

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

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

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

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

24. Breach of Agreement and Termination

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

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

- b. In addition to terminating this Agreement, the City may recover from the surety bond all actual administrative costs as provided by Section 22 of this Agreement.
- c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations.
- d. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

25. Misleading, Dishonest, and Illegal Practices

- a. The Towing Company warrants that it shall not engage in any misleading, dishonest, or illegal practices with regard to the vehicles towed pursuant to this Agreement, and shall charge owners of vehicles only those amounts permitted under this Agreement for those services covered by this Agreement. In the event that an overcharge or other violation covered by this section is reported to the City, the City shall promptly notify the Towing Company of the alleged violation.
- b. If a satisfactory written explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations shall not occur in the future, within the twenty-four (24) hour period, the violation shall constitute a breach of this agreement that may be reported to the City Manager for termination of this Agreement or other appropriate action as provided by Section 24 herein.
- c. The Towing Company shall remedy any overcharge or unauthorized billing immediately by reimbursing the overage or unauthorized amount to the patron billed. In addition to the reimbursement of any overages to the patron, during any twelve (12) month period, any overcharge or unauthorized billing

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

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

26. Public Records Compliance

- a. Towing Company shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:
 - (1) Keep and maintain public records required by the City to perform the service.
 - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
 - (3) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Towing Company does not transfer the records to the City.
 - (4) Upon completion of the Agreement, Towing Company shall transfer to the City, at no cost, all public records in possession of the Towing Company and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- b. If Towing Company does not comply with a public records request, the City shall deem the non-compliance a breach of this Agreement, and the Towing Company may be subject to penalties under Section 119.10, Florida Statutes.

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

27. Legislative Acknowledgement

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

28. Non-Discrimination

During the performance of this Agreement, Towing Company agrees:

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

29. E-Verify

Towing Company shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Towing Company during the term of this Agreement and who provide services to the City under this Agreement.

30. Sovereign Immunity

The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any

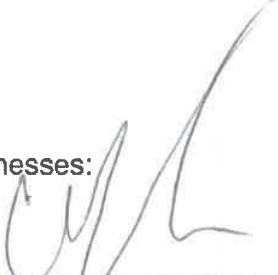
statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap or limit on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall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

31. Miscellaneous

- a. The descriptive headings appearing in this Agreement and by law are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.
- b. The bid documents and specifications are made a part of this Agreement by reference, as if fully set forth herein. In the event of a conflict between the bid documents and specifications, and this Agreement, the terms of this Agreement shall control.
- c. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed, as in any way creating or establishing the relationship of a partnership or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.
- d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.
- b. In the event of any claim, action, litigation, or proceeding in court under this Agreement or in the event of any settlement of a dispute under this Agreement prior to a proceeding filed in court the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

[REMAINDER OF PAGE LEFT BLANK]

Witnesses:


Printed Name: Charles Lawson

Lyn Choquette
Printed Name: Lyn Choquette
Amanda Barlow



AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

TOWING COMPANY

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

By: ABalboa
Adolph Balboa, President

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

Date: 4/1/2025

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

CITY OF PORT ORANGE

By: 
Scott Stiltner, Mayor

Date: 4/15/2025

ATTEST:

By: 
Robin L. Fenwick, MMC, City Clerk

Date: 4/15/2025

EXHIBIT A**MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES**

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

1. Towing vehicles, Class A (GVWR at 9,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be: \$125.00
2. Towing vehicles, Class B (GVWR at 10,000lbs or more but less than 19,500lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length): \$250.00
3. Towing vehicles, Class C (GVWR at 19,500 or more pounds, but less than 25,000lbs or vehicle carrying a vessel more than 22 feet in length): \$375.00
4. Towing vehicles, Class D, greater than 25,000lbs GVWR: \$500.00
5. Innocent Owner Fee (See Sec. 2(h) of the Wrecker Service Agreement) \$75.00
6. If a tarp is required, a flat fee of: \$15.00
7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: \$37.50
8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:
 - a) Class A \$25.00
 - b) Class B \$50.00
 - c) Class C \$75.00
 - d) Class D \$100.00
9. Services charges
 - a) Wrecker on-scene and owner arrives \$25.00
 - b) Wrecker not on scene and owner arrives No charge
10. Storage Rates per day:
 - a) Any vehicle at compound under twelve (12) hours No charge
 - b) Class A:
 - Outside Storage \$20.00
 - Inside Storage \$25.00
 - c) Class B
 - Outside Storage \$25.00
 - Inside Storage \$30.00
 - d) Class C
 - Outside Storage \$55.00
 - Inside Storage \$60.00

e) Class D

- | | |
|-------------------|---------|
| ▪ Outside Storage | \$55.00 |
| • Inside Storage | \$60.00 |

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

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

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

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

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

EXHIBIT "B"

15B-9.005 Wrecker Classification and Required Equipment.

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

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

(3) Sirens on wreckers are prohibited.

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

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

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

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

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

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

2. Dual rear wheels.

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

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

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

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

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

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

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

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

7. One square shovel.

8. One ax.

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

10. Minimum of one (1) five pound CO₂ or dry chemical fire extinguisher or equivalent. Must be approved type and have a current inspection tag attached.

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

12. One set of jumper cables.

13. One four-way lug wrench.

14. One flashlight.

15. Five thirty minute fuses.

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

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

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

19. Fifty pounds of sand or equivalent.

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

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

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

3. Dollies.

4. Flood lights on the hoist.

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

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

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

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

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

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

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

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

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

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

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

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

d. Safety chains.

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

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

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

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

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

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

4. Flood lights on the hoist.

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

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

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

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

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

[illegible]

1. My name is Amanda Balboa. I am over the age of Twenty-one years old. I am the Treasurer of Arrow Service & Towing, 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.

Signed: A. Balboa
Print Name: Amanda Balboa
Title: Treasurer

 CHARLES LAWSON
Notary Public - State of Florida
Commission # HH 695765
My Comm. Expires Jul 9, 2029
Bonded through National Notary Assn.

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



CITY OF PORT ORANGE

Agreement RENEWAL FORM

****THIS FORM IS VALID IF EXECUTED PRIOR TO THE ORIGINAL AGREEMENT/CONTRACT EXPIRATION DATE****

Verify your records by providing the following information:

Name of Company/Organization: J&A Balboa Enterprises d/b/a Arrow Service & Towing ("Contractor")

Name of Contact Person: Amanda Balboa

Mailing Address: 541 Carswell Ave. Holly Hill, FL 32117-4411

E-Mail Contact Address: office@arrowflorida.com

Phone: 386-255-2138

Fax: _____

☒ Standard Contract for Service CA No. 8413

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From May 10, 2026

To: May 9, 2027

Contractor to Provide to City:

☒ Updated Bond

☒ Insurance Certificate/City as additional insured and Waiver of Subrogation for WC

To be completed by the Contractor:

YES ☐ Contractor desires to renew this Agreement for another term at the same price, requirements, specifications, and conditions as provided for above.

NO ☐ Contractor does not desire to renew this Agreement for another term.

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

Contractor's Authorized Representative: _____

A Balboa

Signature

Date: 3/1/26

Please return to the City of Port Orange as follows:

Department: Police

Telephone: 386-506-5876

Contact: Capt. Eric Fisher

Fax: _____

E-Mail efisher@port-orange.org

For City Use Only:

Department Completes the Following:

☐ Renewal Accepted by the Department

☐ Bond received by the Department **OR** ☐ Bond not applicable

☐ Insurance Certificate received by the Department **OR** ☐ Insurance waived by City Manager

City Manager: _____

Date: _____

Original Signed Form Must Be Returned to the City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B7) Resolution No. 26-18 - Approval of State of Florida Department of Environmental Protection Grant Agreement in the amount of \$3,000,000 for the Madeline Ave./Pepperhill Stormwater Pond and Pump Station

DEPARTMENT: City Manager

GOAL: 2 - Infrastructure
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 26-18.

SUMMARY: The City has been awarded \$3,000,000 as part of the 2025 State of Florida Legislative Appropriations. In order to receive the funds from the State, the City must approve the Standard Grant Agreement with the State of Florida Department of Environmental Protection.

The funding will support the construction of a stormwater pond and pump station on the City-owned property located at the corner of Madeline Ave. and Pepper Hill Road, as well as approximately 8,000 feet of stormwater pipe. Stormwater will be collected in the pond from the surrounding area and pumped east directly to the Halifax River. Design of this project is approximately 60% complete, and permitting coordination with the St. Johns River Water Management District is underway. Staff is also verifying easements, evaluating authority within Sugar Forest common areas, and addressing utility conflicts along Herbert Street for the force main piping to be installed.

This grant is a cost reimbursement grant in the amount of \$3,000,000 that was supported by Senator Tom Wright and Representative Chase Tramont in the 2025 Legislative session. The award represents only a portion of the estimated total project cost. Additional funding has been awarded through the Transform 386 program and identified in the City's stormwater utility fund.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Resolution No. 26-18	Resolution No. 26-18 .pdf
2.	Agreement L0322 (For Grantee's	Agreement L0322 (For Grantee's

Signature) REV	Signature) REV.pdf
Robin Fenwick	Created/Initiated - 03/13/2026
Junos Reed	Approved - 03/13/2026
Sue Wang	Approved - 03/14/2026
Matthew Jones	Approved - 03/26/2026
Wayne Clark	Final Approval - 03/26/2026

RESOLUTION NO. 26-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ACCEPTING A \$3,000,000 GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("FDEP"); APPROVING THE STANDARD GRANT AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (GRANT AGREEMENT L0322) FOR THE PURPOSE OF THE PORT ORANGE MADELINE AVE./PEPPERHILL ROAD STORMWATER POND & PUMP STATION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR SAID GRANT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange ("City") has been awarded a \$3,000,000 grant from the State of Florida Department of Environmental for the Port Orange Madeline Ave./ Pepperhill Road Stormwater Pond & Pump Station Project; and

WHEREAS, this grant award will support the construction of collection system drainage improvements in the Sleepy Hollow neighborhood and surrounding area which will provide additional flood protection to approximately 500 residents and businesses; and

WHEREAS, in order to receive said grant, the City must approve and enter into a standard grant agreement (Grant Agreement L0322) with the State of Florida Department of Environmental Protection; and

WHEREAS, the City Council of the City of Port Orange desires to accept the grant funding from the State of Florida Department of Environmental Protection and enter into a grant agreement with the State of Florida Department of Environmental Protection.

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.

RESOLUTION NO. 26-18

Section 2. The City Council of the City of Port Orange, Florida, hereby approves Grant Agreement L0322 and accepts the State of Florida Department of Environmental Protection Grant in the amount of \$3,000,000 for the Port Orange Madeline Ave./ Pepperhill Road Stormwater Pond & Pump Station Project.

Section 3. The City Manager is hereby authorized to execute all applicable grant documents and agreements.

Section 4. This resolution shall become effective immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to section 215.971, Florida Statutes:

1. Project Title (Project): Agreement Number:

Port Orange Madeline Ave./Pepperhill Road Stormwater Pond & Pump Station Project L0322

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **City of Port Orange** Entity Type: **Local Government**

Grantee Address: **1000 City Center Circle, Port Orange, Florida 32129** FEID: **59-6000412**

(Grantee)

3. Agreement Begin Date: Date of Expiration:
July 1, 2025 June 30, 2030

4. Project Number: Project Location(s):
(If different from Agreement Number) **Lat/Long: (29.146991, -81.008932)**

Project Description: **The grantee will construct collection system drainage improvements in the Sleepy Hollow neighborhood and surrounding area. The proposed improvements will provide additional flood protection to approximately 500 residents and businesses.**

5. Total Amount of Funding: \$ 3,000,000.00	Funding Source?	Award #s or Line-Item Appropriations:	Amount per Source(s):
	☒ State ☐ Federal	LP, GAA LI 1555, FY 25-26, WPSPTF	\$ 3,000,000.00
	☐ State ☐ Federal		\$
	☐ State ☐ Federal		\$
	☐ Grantee Match		\$
Total Amount of Funding + Grantee Match, if any:			\$ 3,000,000.00

6. Department's Grant Manager	Grantee's Grant Manager
Name: Taufiqul Aziz	Name: Junos Reed
or successor	or successor
Address: Florida Dept. of Environmental Protection 3900 Commonwealth Blvd., MS 3570 Tallahassee, FL 32399-3000	Address: City of Port Orange 1000 City Center Circle Port Orange, Florida 32129
Phone: 850-245-2950	Phone: 386-717-9050
Email: Taufiqul.aziz@FloridaDEP.gov	Email: jureed@port-orange.org

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☐ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with section 215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Exhibit F: Common Carrier or Contracted Carrier Attestation Form PUR1808 (State)

☐ Exhibit H: Non-Profit Organization Compensation Form (State)	
☐ Exhibit I: Forced Labor Attestation Form	
☐ Additional Exhibits (if necessary):	
8.	The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331 (a) (1):
Federal Award Identification Number(s) (FAIN):	
Unique Entity Identifier (UEI):	
Federal Award Date to Department:	
Federal Award Project Description:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date unless another date is specified in the grant documents.

City of Port Orange

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Wayne Clark, City Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By _____
Secretary or Designee Date Signed

Angela Knecht, Director, Division of Water Restoration Assistance

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

Taufiqul Aziz, DEP Grant Manager

Amanda Peck, DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement;
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department; and/or
 - (5) any changes to the terms and conditions of the Agreement other than the specific instances enumerated below when a change order may be used.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the

execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subrecipients shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.

- ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.
- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
 - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
 - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
 - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for invoice payments and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
 - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.

This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Grantee meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Grantee must provide the Department with documentation that indicates the amount of state funds:

- i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer.
- ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Grantee's website, if Grantee maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual/Subaward Costs (Subcontractors/Subrecipients). Match or reimbursement requests for payments to subcontractors/subrecipients must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts/subawards which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor/subrecipient exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. For grants funded with federal funds, nonconsumable and/or nonexpendable personal property or equipment costing \$10,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in 2 CFR 200. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts/subawards that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts/subaward issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors/subrecipients.

Attachment 1

- i. For fixed-price (vendor) subcontracts/subawards, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts/subawards to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted/subawarded activities shall be supported with a copy of the subcontractor/subrecipient's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract/subaward. The Grantee may request approval from Department to award a fixed-price subcontract/subaward resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor/subrecipient. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract/subaward.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S., or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
- e. Direct Purchase Equipment. For grants funded fully or in part with state funds, equipment is defined as capital outlay costing \$5,000 or more. For grants funded fully with federal funds, equipment is defined as capital outlay costing \$10,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department and does not include any equipment purchased under the delivery of services to be completed by a subcontractor/subrecipient. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor/subrecipient, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.

- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Subrecipients and/or Subcontractors. The Grantee shall require its subrecipients and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its subrecipients and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Subrecipients and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage **prior to** performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.

- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts

of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors/subrecipients or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, and subcontractors/subrecipients and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, and subcontractors/subrecipients; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts/Subawards.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor/subrecipient knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts/subawards with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Development, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts/subawards issued as a result of this Agreement.
- b. The Grantee, its subrecipients, subcontractors and agents must also comply with the following civil rights laws and regulations:
 - i. Title VI of the Civil Rights Act of 1964 as amended (prohibiting discrimination in federally assisted programs on the basis of race, color, or national origin in the delivery of services or benefits);
 - ii. Section 13 of the 1972 Amendment to the Federal Water Pollution Control Act (prohibiting discrimination on the basis of sex in the delivery of services or benefits under the Federal Water Pollution Control Act as amended);

- iii. Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination in federally assisted programs on the basis of disability, both in employment and in the delivery of services and benefits);
- iv. Age Discrimination Act of 1975 (prohibiting discrimination in federally assisted programs on the basis of age in the delivery of services or benefits);
- v. 40 C.F.R. Part 7, (implementing Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of the Rehabilitation Act of 1973);
- vi. Florida Civil Rights Act of 1992 (Title XLIV Chapter 760, Sections 760.01, 760.11 and 509.092, F.S.), including Part I, chapter 760, F.S. (prohibiting discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status).
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
 - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:

<https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted or subawarded, Grantee shall similarly require each subcontractor/subrecipient to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its subrecipients and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its subrecipients and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,

- iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting/Subawards.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor/subrecipient, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor/subrecipient, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract/subaward. The Department shall not be liable to any subcontractor/subrecipient for any expenses or liabilities incurred under any subcontract/subaward, and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract/subaward.
- e. The Department will not deny Grantee's employees, subcontractors/subrecipients, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Development at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor/subrecipient at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s)/subrecipient(s), and without the fault or negligence of either, unless the subcontracted/subawarded products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract/subaward, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors/Subrecipients and Agents.

All Grantee employees, subcontractors/subrecipients, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors/subrecipients, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Disclosure of Gifts from Foreign Sources.

If the value of the grant under this Agreement is \$100,000 or more, Grantee shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Grantee must also provide a copy of such disclosure to the Department of Financial Services.

41. Food Commodities.

To the extent authorized by federal law, the Department, its grantees, contractors and subcontractors/subrecipients shall give preference to food commodities grown or produced in this state when purchasing food commodities, including farm products as defined in section 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

42. Anti-human Trafficking.

If the Grantee is a nongovernmental entity, the Grantee must provide the Department with an affidavit signed by an officer or a representative of the Grantee under penalty of perjury attesting that the Grantee does not use coercion for labor or services as defined in section 787.06, F.S.

43. Iron and Steel for Public Works Projects.

If this Agreement funds a “public works project” as defined in section 255.0993, F.S., or the purchase of materials to be used in a public works project, any iron or steel permanently incorporated in the Project must be “produced in the United States,” as defined in section 255.0993, F.S. This requirement does not apply if the Department determines that any of the following circumstances apply to the Project:

- (1) iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- (2) the use of iron or steel products produced in the United States will increase the total cost of the project by more than twenty percent (20%); or
- (3) complying with this requirement is inconsistent with the public interest.

Further, this requirement does not prevent the Contractor’s minimal use of foreign steel and iron materials if:

- (1) such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
- (2) the “cost” of such materials, as defined in section 255.0993, F.S., does not exceed one-tenth of one percent (1%) of the total Project Cost under this Agreement or \$2,500, whichever is greater.

Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system that are necessary for operation or concealment (excepting transmission and distribution poles) are not considered to be iron or steel products and are, therefore, exempt from the requirements of this paragraph.

This provision shall be applied in a manner consistent with and may not be construed to impair the state’s obligations under any international agreement.

44. Complete and Accurate information.

Grantee represents and warrants that all statements and information provided to DEP are current, complete, and accurate. This includes all statements and information in this Grant, as well as its Attachments and Exhibits.

45. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. L0322**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Port Orange Madeline Ave./Pepperhill Road Stormwater Pond & Pump Station Project. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement is the same as the term of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☐	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☐	☐	a. Fringe Benefits, N/A.
☐	☐	b. Indirect Costs, N/A.
☒	☐	Contractual/Subaward (Subcontractors/Subrecipients)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☐	☐	Rental/Lease of Equipment
☐	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy

maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Commercial General Liability Insurance.

The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10 percent of the total amount of the Agreement.

11. Subcontracting/Subawards.

The Grantee may subcontract/subaward work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts/subawards pursuant to this Agreement, which require prior approval. Regardless of any subcontract/subaward, the Grantee is ultimately responsible for all work to be performed under this Agreement. Upon request by the Department's Grant Manager, the Grantee will submit a copy of the executed subcontract.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

The Grantee will identify the expected return on investment for this project and provide this information to the Governor's Office of Policy and Budget (OPB) within three months of execution of this Agreement. For each full calendar quarter thereafter, the Grantee will provide quarterly update reports directly to OPB, no later than 20 days after the end of each quarter, documenting the positive return on investment to the state that results from the Grantee's project and its use of funds provided under this Agreement. Quarterly reports will continue until the Grantee is instructed by OPB that no further reports are needed, or until the end of this Agreement, whichever occurs first. All reports shall be submitted electronically to OPB at env.roi@laspbs.state.fl.us, and a copy shall also be submitted to the Department at legislativeaffairs@floridaDEP.gov.

14. Common Carrier.

- a. Applicable to contracts/grants with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor/Subrecipient must also fill

out and return PUR 1808 before contract/subaward execution. If Contractor/Subrecipient is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this Agreement immediately if Contractor/Subrecipient is found to be in violation of the law or the attestation in PUR 1808.

- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Financial Assistance and Payment of Invoices to Rural Communities or Rural Areas of Opportunity

This agreement does not provide federal or state financial assistance to a county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2).

16. Additional Terms.

None.

Any terms added here must be approved by the Office of General Counsel.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Port Orange Madeline Ave./Pepperhill Road Stormwater Pond & Pump Station Project.

PROJECT LOCATION: The Project will be located in the City of Port Orange within Volusia County; Lat/Long (29.146991, -81.008932).

PROJECT BACKGROUND: The project area experienced historic flooding due to the Nova Canal being over its capacity during Hurricanes Ian (2022) and Milton (2024). The proposed improvements will provide additional flood protection to approximately 500 residents and businesses.

PROJECT DESCRIPTION: The City of Port Orange (Grantee) will construct collection system drainage improvements in the Sleepy Hollow neighborhood and surrounding area. The project will include construction of a new stormwater pond and pumping station at corner of Madeline Ave and Pepper Hill Road. The work will also include constructing a stormwater force main from the pump station and a new outfall into the Halifax River (Approximately 8,000 Feet).

The Grantee does not anticipate that the funding under this Agreement will result in a fully completed project, so this Agreement will cover a portion of the work.

TASKS: All documentation should be submitted electronically unless otherwise indicated and should be submitted prior to the expiration of the grant agreement.

Task 1: Construction

Deliverables: The Grantee will construct Madeline Ave./Pepperhill Road Stormwater Pond & Pump Station Project in accordance with the final design.

Documentation: The Grantee will submit: 1) a copy of the final design; 2) a signed summary of activities completed for the period of work covered in the payment request, using the format provided by the Department's Grant Manager. Upon request by the Department's Grant Manager, the Grantee will provide additional supporting documentation relating to this task.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

For payment requests that include Contractual Services, the Grantee shall provide documentation of the procurement process, as consistent with Attachment 1, Section 9.c.

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Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Construction	Contractual Services	\$3,000,000	07/01/2025	12/31/2029
Total:			\$3,000,000		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$1,000,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$1,000,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from non-federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

Attachment 5

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(1)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and the current Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and the current Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <https://www.myfloridacfo.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and the current Rules of the Auditor General, as applicable.
5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or the current Rules of the Auditor

Attachment 5

3 of 6

General, should indicate the date and time the reporting package was delivered to the recipient and any correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Department of Environmental Protection	2025 - 2026	37.039	Statewide Water Quality Restoration Projects	\$3,000,000	149950
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$3,000,000	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [<https://apps.fldfs.com/fsaa/compliance.aspx>]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

Attachment 5, Exhibit 1

6 of 6

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit A
Progress Report Form**

The current **Exhibit A, Progress Report Form** for this grant can be found on the Department's website at this link:

<https://floridadep.gov/wra/wra/documents/progress-report-form>

Please use the most current form found on the website, linked above, for each progress report submitted for this project.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit C
Payment Request Summary Form**

The **Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B8) Resolution No. 26-19 - Tow Rates for Wrecker Service Agreement

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Resolution No. 26-19.

SUMMARY: Section 125.0103, Florida Statutes, authorizes municipalities to establish maximum rates for nonconsensual towing and storage. Because the City of Port Orange has historically adopted its own rate schedule and vehicle classifications, the City's maximum rates have differed from those established by Volusia County under Section 118-98 of the County Code. Although the City is permitted to maintain separate rates, the dual schedules have created confusion for towing companies, property owners, law enforcement, and the public regarding which maximum rates apply within City limits.

To increase clarity and regional consistency, the proposed resolution repeals Resolution No. 19-15, established in May 2019 to align the City's towing rates and vehicle classifications with those adopted by Volusia County through Ordinance No. 2024-25. Updating the classifications is also necessary because modern vehicle production has resulted in lighter-weight vehicles that no longer align with the City's older weight categories. Aligning with the County's classifications ensures that similar vehicles are treated consistently across jurisdictions. Resolution No. 26-19 also ensures compliance with Section 125.0103(1)(d), Florida Statutes, which requires publication and public availability of maximum towing rates. The update affects only rate amounts and classifications and does not alter the City's existing towing procedures or regulatory structure.

To date, the cities of Daytona Beach, Holly Hill, Ormond Beach, Daytona Beach Shores, Florida Highway Patrol, and Volusia County Sheriff's Office have adopted the rates set forth in Volusia County Section 118-98 through Ordinance No. 2024-25. The City of South Daytona adopted rates that are higher than those outlined in the Volusia County ordinance. A letter from our current vendor is provided as well regarding the rate increase.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 26-19 - Towing Rates	Resolution No. 26-19 - Towing Rates.doc
2.	Towing Rate Comparison EF03.03.26	Exhibit A - Reso. 26-XX - EF03.03.26.docx
3.	Volusia County Ord 2024-25	Volusia County Ord 2024-25.pdf
4.	County ordinances	County ordinances.pdf
5.	Letter from Arrow Towing - Rate Increase	Letter from Arrow Towing - Rate Increase.pdf

Eric Fisher	Created/Initiated - 03/13/2026
Manuel Marino	Approved - 03/17/2026
Sue Wang	Approved - 03/17/2026
Matthew Jones	Approved - 03/26/2026
Wayne Clark	Final Approval - 03/26/2026

RESOLUTION NO. 26-19

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING THE MAXIMUM RATES ALLOWABLE FOR NON-CONSENTUAL AND TRESPASS VEHICLE TOWING WITHIN THE CITY LIMITS; REPEALING RESOLUTION NO. 19-15; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 166.043(1)(b) of the Florida Statutes provides that local governments may enact rates for the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle (hereinafter generally referred to as “nonconsensual tows”);

WHEREAS, Section 18-226 of the City of Port Orange Code of Ordinances provides that the City Council may, by resolution, establish rates that may be charged by any wrecker licensed to do business within the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City of Port Orange hereby adopts the maximum rates set forth in Exhibit “A” (attached hereto) for non-consensual and trespass tows that originate within the City of Port Orange.

SECTION 2. All resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict. This Resolution expressly repeals and replaces Resolution No. 19-15.

SECTION 3. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared severable.

SECTION 4. This Resolution shall become effective immediately upon final passage by the City Council.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of _____, 2026

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

EXHIBIT A

MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES

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

1. Towing vehicles, Class A (GVWR at 5,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be:
 - Trespass Tow (flat rate) \$135.00
 - Nonconsensual tow (flat rate) \$150.00
2. Towing vehicles, Class B (GVWR at 6,000lbs or more but less than 15,000lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length), shall be:
 - Trespass Tow (flat rate) \$300.00
 - Nonconsensual tow (flat rate) \$350.00
3. Towing vehicles, Class C (GVWR at 15,001 or more pounds, but less than 25,999lbs or vehicle carrying a vessel more than 22 feet in length), shall be:
 - Trespass Tow (flat rate) \$450.00
 - Nonconsensual tow (flat rate) \$500.00
4. Towing vehicles, Class D, greater than 26,000lbs GVWR shall be:
 - a. Trespass Tow (flat rate) \$600.00
 - b. Nonconsensual Tow (flat rate) \$650.00
5. Innocent Owner fee (See Sec. 2(h) of the Wrecker Service Agreement) \$75.00
6. If a tarp is required, a flat fee of: \$15.00
7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: \$37.50

8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows, (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:

a) Class A	\$35.00
b) Class B	\$70.00
c) Class C	\$110.00
d) Class D	\$145.00

9. Services charges

- | | |
|--|-----------|
| a) Wrecker on-scene and owner arrives: | \$25.00 |
| b) Wrecker not on scene and owner arrives: | No charge |

10. Storage Rates per day. A “day” as defined in this fee schedule shall be a rolling 24-hour period commencing at the time the vehicle arrives at the tow yard.

- | | |
|---|-----------|
| a) Any vehicle at compound under twelve (12) hours: | No charge |
| b) Class A: | |
| • Outside Storage | \$35.00 |
| • Inside Storage | \$40.00 |
| c) Class B | |
| • Outside Storage | \$50.00 |
| • Inside Storage | \$55.00 |
| d) Class C | |
| • Outside Storage | \$75.00 |
| • Inside Storage | \$80.00 |
| e) Class D | |
| • Outside Storage | \$80.00 |
| • Inside Storage | \$85.00 |

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

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

B. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or \$150.00, whichever is less.

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

- a) Mileage
- b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
- c) Time spent at the scene of the tow, other than those specified in this schedule
- d) Release fees during normal business hours (Monday—Friday, 8:00 a.m.—6:00 p.m.);
- e) Access fees, labor fees, administrative fees or any other charges or fees not specifically mentioned in this fee schedule to allow the owner or the owner's representative to remove personal property or examine the vehicle both during or after business hours with the exception of the \$35.00 after business hour access fee stipulated in item 12.
- f) Yard fees, labor fees, administrative fees, set-out fees (sometimes referred to as *Secondary Tow*), or gate fees or any other charges or fee's not specifically mentioned in this fee schedule for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area both during or after business hours with the exception of the \$35.00 after business hour release fee stipulated in item 12.
- g) Fuel surcharge fees
- h) Storage for the first twelve hours

EXHIBIT A MAXIMUM NONCONSENSUAL TOW RATES

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

1. Towing vehicles, Class A (GVWR at ~~9~~5,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be:
 - Tresspass Tow (flat rate) ~~\$12~~35.00
 - Nonconsensual tow (flat rate) \$150.00
2. Towing vehicles, Class B (GVWR at ~~40~~6,000lbs or more but less than ~~159,500~~100lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length), shall be:
 - Tresspass Tow (flate rate) ~~\$253~~00.00
 - Nonconsensual tow (flat rate) \$350.00
3. Towing vehicles, Class C (GVWR at ~~159,500~~10 or more pounds, but less than ~~25,999~~000lbs or vehicle carrying a vessel more than 22 feet in length), shall be:
 - Tresspass Tow (flate rate) ~~\$375~~450.00
 - Nonconsensual tow (flat rate) \$500.00
4. Towing vehicles, Class D, greater than ~~26~~5,000lbs GVWR shall be:
 - Tresspass Tow (flat rate) ~~\$56~~00.00
 - Nonconsensual Tow (flat rate) \$650.00
- 4.
5. Innocent Owner fee (See Sec. 2(h) of the Wrecker Service Agreement) \$75.00
6. If a tarp is required, a flat fee of: \$15.00
7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: \$37.50
8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows, (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:
 - a) Class A \$235.00
 - b) Class B \$570.00
 - c) Class C ~~\$75~~110.00
 - d) Class D \$14500.00

9. Services charges

- | | |
|---|-----------|
| a) Wrecker on-scene and owner arrives | \$25.00 |
| b) Wrecker not on scene and owner arrives | No charge |

10. Storage Rates per day. A "day" as defined in this fee schedule shall be a rolling 24 hour period commencing at the time the vehicle arrives at the tow yard.

- | | |
|--|-----------------------|
| a) Any vehicle at compound under twelve (12) hours | No charge |
| b) Class A: | |
| • Outside Storage | \$35 20.00 |
| • Inside Storage | \$40 25.00 |
| c) Class B | |
| • Outside Storage | \$50 25.00 |
| • Inside Storage | \$55 30.00 |
| d) Class C | |
| • Outside Storage | \$57 5.00 |
| • Inside Storage | \$68 0.00 |
| e) Class D | |
| • Outside Storage | \$80 55.00 |
| • Inside Storage | \$85 60.00 |

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

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

B. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or ~~\$150~~65.00, whichever is less.

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

- a) Mileage
- b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
- c) Time spent at the scene of the tow, other than those specified in this schedule
- d) Release fees during normal business hours (Monday—Friday, 8:00 a.m.—6:00 p.m.);

- e) Access fees, labor fees, administrative fees or any other charges or fees not specifically mentioned in this fee schedule to allow the owner or the owner's representative to remove personal property or examine the vehicle both during or after business hours with the exception of the \$35.00 after business hour access fee stipulated in item 12.
- f) Yard fees, labor fees, administrative fees, set-out fees (sometimes referred to as *Secondary Tow*), or gate fees or any other charges or fee's not specifically mentioned in this fee schedule for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area both during or after business hours with the exception of the \$35.00 after business hour release fee stipulated in item 12.
- g) Fuel surcharge fees
- h) Storage for the first twelve hours

File Number: 12188

Item: 04

Date: 10/01/2024

AGENDA ITEM

☒ Ordinance☐ Resolution☐ Budget Resolution☐ Other

County Goals

☐	More Efficient Regulatory Framework	☐	Increase Efficiency and Effectiveness of Government Operations	☐	Implement a Plan for Expanded Recreation
☐	Enhance Fiscal Stewardship	☐	Support a Solution-Oriented Culture	☒	NA

Department: Leadership

Division: Leadership

Subject: Ordinance 2024-25 - Updated Towing Fees

Suzanne Konchan Director Leadership Approved By: <i>Suzanne Konchan</i> Department Approval		Legal Morgan Swenk Assistant County Attorney Approved By: <i>Morgan Swenk</i> Approved as to Form and Legality	County Manager's Office Ryan Ossowski Chief Financial Officer Approved By: <i>Ryan Ossowski</i>
Suzanne Konchan Approved By: <i>Suzanne Konchan</i> Division Approval			

Council Action:

Modification:

Account Number(s): NA

Total Item Budget: NA

Staff Contact(s):

Jeaniene Jennings

Phone:

386 822 5789

Ext.

15789

Summary/Highlights:

At the June 4, 2024, council meeting there was a discussion for options on updating towing fees. Due to the state implementing new requirements on towing effective July 1, 2024, this item was tabled, with direction for staff to meet with the representatives from the tow community. Meetings were held on July 19th and on August 19th with representatives of the towing groups and the Volusia Sheriff's Office to discuss changes. Attached is a proposed ordinance, resolution and business impact for consideration.

An ordinance for adoption of updated fees and changes is attached for your review and action.

The ordinance was advertised on September 16, 2024. The business impact estimate was published on the county website on September 13, 2024.

Recommended Motion: Approval

ORDINANCE 2024-25

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, BY AMENDING CHAPTER 118, ARTICLE IV, WRECKERS, BY AMENDING DIVISION 1, SECTION 118-95 – “EQUIPMENT REQUIREMENTS”; BY AMENDING SECTION 118-98 – “ESTABLISHMENT OF RATES, TRESPASS AND NON-CONSENSUAL TOWS AND IMMOBILIZATION”; BY AMENDING CHAPTER 118, ARTICLE IV, DIVISION 2, SECTION 118-103 – “TRESPASS TOW, NOTIFICATION;” BY AMENDING SECTION 118-105 – “PENALTIES;” PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1(g) of the Florida Constitution and Section 125.01, Florida Statutes, the Volusia County Council has broad home rule powers to govern the County, including the power to adopt ordinances as may be necessary to carry out both county and municipal powers and purposes; and

WHEREAS, numerous firms and persons in Volusia County engage in the business of performing towing and recovery of motor vehicles; and

WHEREAS, towing companies have substantial interaction with the public and play an important role in clearing the County’s roadways of wrecked vehicles and debris; and

WHEREAS, pursuant to section 125.0103(c) Florida Statutes, Volusia County must establish the maximum rates which may be charged for the non-consensual towing or immobilization of vehicles or vessels; and

WHEREAS, pursuant to section 125.0103(d), Florida Statutes, Volusia County must establish a process for investigating and resolving complaints regarding fees charged in excess of the maximum rates established; and

WHEREAS, the County Council of Volusia County, Florida now desires to update and set forth the schedule of fees and regulations as set forth herein; and

WHEREAS, the County Council of Volusia County, Florida has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Volusia County.

BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY,
FLORIDA, AS FOLLOWS:

(Words in ~~strike-through~~ type are deletions; words in underscore type are
additions.)

SECTION I: Incorporation of Recitals. The above recitals represent the legislative
findings of the Volusia County Council supporting the need for this ordinance.

SECTION II: That Chapter 118, Wreckers, of the Code of Ordinances, County of
Volusia, is amended as follows:

...

Sec. 118-95. Equipment required.

Every wrecker towing a vehicle, when the tow originates within the county, shall be
equipped with the following:

...

- (5) Name, address, and telephone number of the company ~~of concern~~ on both
sides of the vehicles.

...

**Sec. 118-98. Establishment of rates; trespass and nonconsensual tows and
immobilizations.**

(a) The maximum rates for towing a vehicle, for the storage of a towed vehicle or for
the rendition of other services involving the use of a wrecker or other customary
towing services when the point of origin of the tow or such services is within the
boundaries of Volusia County shall be as follows:

- (1) Class A vehicles (gross vehicle weight rating at ~~9,999~~ 5,999 pounds or less or
a vehicle carrying a vessel 15 feet or less in length) as adopted by resolution.

~~a. Trespass tow (flat rate) \$125.00~~

~~b. Nonconsensual tow \$150~~

~~c. Nonconsensual tow, per mile over initial ten miles, per full extra mile \$6.00~~

- 65 d. ~~Nonconsensual tow, time beyond initial 30 minutes at scene, 15-minute~~
66 ~~block \$25.00~~
- 67 e. ~~Trespass or nonconsensual tow daily storage per day, inside storage~~
68 ~~\$45.00~~
- 69 f. ~~Immobilization \$75.00~~
- 70 g. ~~Outside storage, per day \$20.00~~
- 71 (2) Class B vehicles (gross vehicle weight rating at ~~10,000~~ 6,000 pounds or more,
72 but less than ~~19,500~~ 15,000 pounds or vehicle carrying a vessel more than 15
73 feet, but less than 22 feet in length) as adopted by resolution.
- 74 a. ~~Trespass tow (flat rate) \$250.00~~
- 75 b. ~~Nonconsensual tow \$250.00~~
- 76 c. ~~Nonconsensual tow, per mile over initial ten miles, per full extra mile \$4.00~~
- 77 d. ~~Nonconsensual tow, time beyond initial 30 minutes at scene, per 15-~~
78 ~~minute block \$50.00~~
- 79 e. ~~Trespass or nonconsensual tow daily storage per day, inside storage~~
80 ~~\$30.00~~
- 81 f. ~~Immobilization \$75.00~~
- 82 g. ~~Outside storage, per day \$25.00~~
- 83 (3) Class C vehicles (gross vehicle weight rating at ~~19,500~~ 15,001 or more
84 pounds, but less than ~~25,000~~ 25,999 pounds or vehicle carrying a vessel more
85 than 22 feet in length) as adopted by resolution.
- 86 a. ~~Trespass tow (flat rate) \$375.00~~
- 87 b. ~~Nonconsensual tow \$375.00~~
- 88 c. ~~Nonconsensual tow, per mile over initial ten miles, per full extra mile \$5.00~~
- 89 d. ~~Nonconsensual tow, time beyond initial 30 minutes at scene, per 15-~~
90 ~~minute block \$75.00~~

91 e. ~~Trespass or nonconsensual tow daily storage per day, inside storage~~
92 ~~\$60.00~~

93 f. ~~Outside storage, per day \$55.00~~

94 (4) Class D vehicles (gross vehicle weight rating at more than ~~25,000~~ 26,000
95 pounds) as adopted by resolution.

96 a. ~~Trespass tow (flat rate) \$500.00~~

97 b. ~~Nonconsensual tow \$500.00~~

98 c. ~~Nonconsensual tow, per mile over initial ten miles, per full extra mile \$6.00~~

99 d. ~~Nonconsensual tow, time beyond initial 30 minutes at scene, per 15-~~
100 ~~minute block \$100.00~~

101 e. ~~Trespass or nonconsensual tow daily storage per day, inside storage~~
102 ~~\$60.00~~

103 f. ~~Outside storage, per day \$55.00~~

104 (b) An additional daily storage fee, as set forth ~~above~~ by resolution, may be charged
105 for any vessel, trailer or other mobile item, whether motorized or not, which is
106 mounted on wheels and attached to a towed vehicle.

107 (c) The maximum rate for a subsequent class may be charged if the recovery activity
108 performed involves a vehicle that is loaded or modified, therefore altering the
109 vehicle's original weight, dimensions, or ground clearance such that the vehicle is
110 determined to be within that subsequent class or involves additional equipment not
111 contemplated for the class indicated in the initial tow request, upon the written
112 authorization and approval of the investigating law enforcement agency or officer on
113 the scene.

114 (d) The maximum rates established by resolution ~~in subsection (a) above~~ shall be a flat
115 fee which shall be all-inclusive, and, by way of illustration, no additional charges
116 shall be made for:

117 ...

(d) (e) No other fees of whatever kind may be charged for services rendered during the first 12 hours that the vehicle is in the possession of the wrecker, beginning from the time the vehicle is delivered to the storage facility, except as specifically provided herein. Storage fees as set forth above may be assessed after the initial six-hour period based on calendar day increments. An administrative fee for compliance with statutory notice requirements may be charged after the first 48 hours so long as the wrecker service has actually complied with the requirements of F.S. § 713.78, including execution and mailing of the lien notice. ~~The fee must be based on actual costs for such compliance.~~ Further, a "tarpaulin fee" in the amount of \$15.00 may be assessed when the towing service reasonably finds it necessary to install and maintain tarpaulin coverage on any class A stored vehicle in order to protect the interior accessories or upholstery of such vehicle from damage by inclement weather. Tarpaulin fees for coverage of any other class vehicle must be reasonable and based on actual costs.

(e)(f) An after-hours (Monday—Friday, 6:00 p.m.—8:00 a.m., Saturday and Sunday and national holidays) release fee not to exceed \$35.00 may be charged.

~~(f)(g) The maximum fees set forth herein may be changed from time to time by a resolution adopted by the county council.~~ Rate adjustment review. Effective January 1, 2029, and on January 1 of each subsequent 5 year period thereafter, the maximum rates established herein shall be reviewed for adjusted based on the actual percentage change in the Consumer Price Index as measured in accordance with section 193.155(1)(b), Florida Statutes, based on the average of the index from the previous five (5) years (December to December) or 3%, whichever is lower.

...

Sec. 118-101. Miscellaneous provisions.

...

(c) All consumer complaints directed to Volusia County concerning excessive charges or alleged bad practices committed contrary to the provisions of this article shall be referred for investigation and resolution to ~~the Volusia County Sheriff's Office~~ Volusia County Code Enforcement.

148 (d) Each towing service shall staff or monitor its telephone at all times and immediately
149 advise any vehicle owner or authorized representative who calls by telephone prior
150 to arriving at the storage site of the following:

151 ...

152 **DIVISION 2. - TRESPASS TOWING...**

153 **Sec. 118-103. Notification.**

154 (a) Any towing service initiating a trespass tow within the boundaries of Volusia County
155 shall notify the Volusia County Sheriff's Office within 30 minutes of the completion of
156 any such trespass tow. Such notification to the Volusia County Sheriff's Office shall
157 relate, at a minimum, the following information concerning the subject trespass tow:
158 the storage site; the time the vehicle was towed or removed; and the make, model,
159 year, color, vehicle identification number (VIN), and license plate number of the
160 vehicle.

161 ...

162 **Sec. 118-105. Penalties.**

163 Volusia County Code Enforcement shall have jurisdiction to enforce this article as
164 provided by law and ordinance. For that purpose, violation of division I and division II of
165 this article is deemed to be an irreparable or irreversible violation punishable by the civil
166 penalties herein and is subject to immediate citation. Each violation of this section shall
167 constitute a separate offense punishable as provided in section 1-7 and chapter 2, article
168 VII of this Code.

169 (a) Volusia County Code Enforcement is hereby authorized to issue citations with a civil
170 penalty of \$450 to a person or firm when, based upon an investigation, Volusia County
171 Code Enforcement has reasonable cause to believe that a person or firm has committed
172 a civil infraction in violation of a county code or ordinance, including but not limited to,
173 charging more than the maximum rates for towing services established by Volusia
174 County.

...

SECTION III: Authorizing Inclusion in Code. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

SECTION IV: Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION V: Conflicting Ordinances. All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION VI: Effective Date. This ordinance shall take effect upon filing of a certified copy by e-mail with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS 1ST DAY OF OCTOBER 2024 A.D.

ATTEST: COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

George Recktenwald
County Manager

Jeffrey S. Brower
County Chair

RESOLUTION NO. 2024-__

A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, ESTABLISHING THE MAXIMUM RATES FOR TOWING, FOR IMMOBILIZATION OF VEHICLES, AND FOR REMOVAL, STORAGE OF VEHICLES, SEPARATE CHARGES IN ACCORDANCE WITH CHAPTER 118 OF THE CODE OF ORDINANCES OF VOLUSIA COUNTY FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sections 125.0103(1)(c) and 166.043(1)(c), Florida Statutes, mandates the County enact regulations establishing maximum rates for the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from accident scenes or for the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to law enforcement officer, or otherwise does not consent to the removal of a vehicle; and

WHEREAS, such towing services frequently must be provided without the prior consent of the vehicle/vessel owner, or under circumstances which prevent negotiating the charges, terms, and conditions for the towing service, often resulting in disagreements and complaints between vehicle/vessel owners and providers of towing services; and

WHEREAS, Sections 125.0103(c) and 166.043(1)(c), Florida Statutes, authorizes the County to enact regulations pertaining to the towing industry that supplement the requirements of Florida Statutes, including the establishment of towing rates when vehicles are removed from private property; and

WHEREAS, Section 118-98, Volusia County Code, specifies that the County Council of Volusia County shall by resolution establish maximum towing rates and fees related to the towing of vehicles in Volusia County; and

WHEREAS, the County desires to update and clarify the maximum rates for towing and storage of towed vehicles, the rendition of other services involving the use of a wrecker, and other customary towing services when the point of origin of the tow or services is within the boundaries of the County; and

WHEREAS, the maximum towing rates and other regulations contained in this Resolution serve a compelling government interest to protect public health and safety of the owners of towed vehicles/vessels and of the residents and visitors in Volusia County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. ESTABLISHMENT OF THE SCHEDULE OF FEES. In accordance with Section 118-98, Volusia County Code, the schedule of maximum fees for the towing, removal and storage of vehicles, and other towing related services are hereby established and adopted as set forth in Exhibit A, attached hereto and incorporated herein. No other charges or fees shall apply to or be collected other than what is defined herein or Article IV, Chapter 118, Volusia County Code.

SECTION 2. SEVERABILITY. If any provision of this Resolution is deemed void by a Court of competent jurisdiction, or if any provision of this Resolution becomes preempted to the State, then the voided or preempted provision shall be deemed stricken and shall no effect on the remaining provisions.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect upon its adoption. The schedule of fees included herein shall remain in effect until such time as the same are amended by adoption of a subsequent resolution.

DONE AND ORDERED IN OPEN MEETING.

**COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA**

ATTEST: _____
George Recktenwald
County Manager

Jeffrey S. Brower
County Chair

EXHIBIT A

(1) Class A vehicles (gross vehicle weight rating at 5,999 pounds or less or a vehicle carrying a vessel 15 feet or less in length):

a. Trespass tow (flat rate)	\$135.00
b. Nonconsensual tow	\$150.00
c. Trespass or nonconsensual tow, per mile over initial ten miles ¹ , per full extra mile\$5.00	
d. Trespass or nonconsensual tow, time beyond initial 15 minutes at scene, 15-minute block	\$35.00
e. Trespass or nonconsensual tow daily storage per day, inside storage	\$40.00
f. Immobilization	\$75.00
g. Trespass tow outside storage, per day	\$30.00
h. Nonconsensual tow outside storage, per day	\$35.00

(2) Class B vehicles (gross vehicle weight rating at 6,000 pounds or more, but less than 15,000 pounds or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length):

a. Trespass tow (flat rate)	\$300.00
b. Nonconsensual tow	\$350.00
c. Trespass or nonconsensual tow, per mile over initial ten miles ² , per full extra mile\$6.00	
d. Trespass or nonconsensual tow, time beyond initial 15 minutes at scene, per 15-minute block	\$70.00
e. Trespass or nonconsensual tow daily storage per day, inside storage	\$50.00
f. Immobilization	\$75.00
g. Outside storage, per day	\$50.00

¹ Initial mileage is calculated from point of origin of the tow vehicle to location of vehicle hook-up.

² Initial mileage is calculated from point of origin of the tow vehicle to location of vehicle hook-up.

(3) Class C vehicles (gross vehicle weight rating at 15,001 or more pounds, but less than 25,999 pounds or vehicle carrying a vessel more than 22 feet in length):

a. Trespass tow (flat rate)	\$450.00
b. Nonconsensual tow	\$500.00
c. Nonconsensual tow, per mile over initial ten miles ³ , per full extra mile	\$7.00
d. Trespass or nonconsensual tow, time beyond initial 15 minutes at scene, per 15-minute block	\$110.00
e. Trespass or nonconsensual tow daily storage per day, inside storage	\$75.00
f. Outside storage, per day	\$75.00

(4) Class D vehicles (gross vehicle weight rating at more than 26,000 pounds):

a. Trespass tow (flat rate)	\$600.00
b. Nonconsensual tow	\$650.00
c. Nonconsensual tow, per mile over initial ten miles ⁴ , per full extra mile	\$8.00
d. Trespass or nonconsensual tow, time beyond initial 15 minutes at scene, per 15-minute block	\$145.00
e. Trespass or nonconsensual tow daily storage per day, inside storage	\$80.00
f. Outside storage, per day	\$80.00

(5) Separate Charges

a. Air Bags (at cost, not to exceed)	\$4,000.00
b. Bobcat, skid steer, fork lift (per hour time on scene)	\$300.00
c. Maintenance of traffic (MOT) setup - Rate (per hour)	\$135.00
d. Hazardous Spill kits (per bag)	\$60.00
e. Rotator (All Classes A-D, 50-ton hourly rate, minimum 2 hours)	\$1,300.00

³ Initial mileage is calculated from point of origin of the tow vehicle to location of vehicle hook-up.

⁴ Initial mileage is calculated from point of origin of the tow vehicle to location of vehicle hook-up.

f. Notice of Lien Administrative Charge

\$150.00

(6) The maximum rate for a subsequent class may be charged if the recovery activity performed involves a vehicle that is loaded or modified, therefore altering the vehicle's original weight, dimensions, or ground clearance such that the vehicle is determined to be within a subsequent class or involves additional equipment not contemplated for the class indicated in the initial tow request, upon the written authorization and approval of the investigating law enforcement agency or officer on the scene.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the County's website by the time notice of the proposed ordinance is published.

ORDINANCE 2024-25

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, BY AMENDING CHAPTER 118, ARTICLE IV, WRECKERS, BY AMENDING DIVISION 1, SECTION 118-95 – "EQUIPMENT REQUIREMENTS"; BY AMENDING SECTION 118-98 – "ESTABLISHMENT OF RATES, TRESPASS AND NON-CONSENSUAL TOWS AND IMMOBILIZATION"; BY AMENDING CHAPTER 118, ARTICLE IV, DIVISION 2, SECTION 118-103 – "TRESPASS TOW, NOTIFICATION;" BY AMENDING SECTION 118-105 – "PENALTIES;" PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 125.66(3), Florida Statutes. If one or more boxes are checked below, this means the County is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the County is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that 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 county government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

¹ See Section 125.66(3)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the County hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance increases the maximum tow rate schedules that may be charged by businesses engaging in towing services across all classes, includes additional charges for use of specialized equipment, clarifies requirements, and updates agency contact information and guidelines for towing companies. Towing company representatives have indicated the need for an increase in the maximum tow rate schedule to address an increase in operational costs including costs for vehicle acquisition, maintenance, insurance, and fuel costs, as well as employee retention. Whereas towing companies have substantial interaction with the public and play an important role in clearing the County's roadways of wrecked vehicles and debris, the proposed ordinance will promote the general economic welfare and safety of the people of Volusia County.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the County, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur;

Violation citations of \$450 per occurrence could impact the 12 towing companies currently involved in towing services in Volusia County. There is expected to be no direct cost to comply for businesses. Costs to comply by the general public for trespass and nonconsensual tows would increase as follows: Class A from \$125/\$150 to \$135/\$150; Class B from \$250/\$250 to \$300/\$350; Class C from \$375/\$375 to \$450/\$500; Class D from \$500/\$500 to \$600/\$650.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and

There will be cap to the amount that may be charged for towing services imposed by the proposed ordinance.

(c) An estimate of the County's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are no new regulatory costs that will be incurred with the passage of this ordinance.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The estimated businesses that may be impacted by the proposed ordinance is 12 entities currently involved in the towing industry. All other businesses would be affected in the same manner as a member of the general public.

4. Additional information the governing body deems useful (if any):

Cities may have their own towing fee schedule that could override the County rates for towing services in incorporated city limits.

County ordinances

[Home](#) > [Government](#) > [County ordinances](#)

The link below takes you to a database of Volusia County Government's code of ordinances.

■ [Municipal Code of Ordinances](#)

Trespass Towing

Trespass towing is the towing or removal of a vehicle, without operator consent, when the vehicle is parked on private real property. The following information does not apply to vehicles which are towed under the direction of law enforcement (referred to as *Nonconsensual Towing* in the County's Code of Ordinances). Please see [Section 118.91 of the County's Code of Ordinances](#) for complete information on Volusia County's Towing Ordinance.

Things You Should Know

- Tow operators are required to notify the Volusia County Sheriff's Office within 30 minutes of the completion of a trespass tow.
- If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to the vehicle being connected to the towing apparatus, the towing service may not tow the vehicle, or charge for its services.
- If the registered owner or other legally authorized person in control of the vehicle after the vehicle has been connected to the towing apparatus, the vehicle can be recovered upon paying the tow operator a drop fee before the vehicle has left the property.
 - The maximum allowable rate for a drop fee is half the rate of the tow fee. (Section 118.104(2))

If Your Vehicle Has Been Towed

- Look for towing signage in the immediate vicinity. Contact the towing service to determine if your vehicle has been towed.
 - A tow-away notice must be posted which includes the name and current telephone number of the person or firm towing or removing the vehicle.
 - Towing services are required to monitor phones at all times.
- If a sign is not posted, contact local law enforcement's non-emergency line to determine if your vehicle has been towed.
- Retrieve your vehicle as soon as possible to avoid additional charges.
- The owner or the owner's representative may remove personal property or examine the vehicle without incurring a fee.

Complaints

All consumer complaints concerning excessive charges or alleged bad practices shall be referred for investigation and resolution to the Volusia County Code Enforcement office.

Fees

Class	Service	Rate
-------	---------	------

2026 Charter Review Commission
Advisory Boards
Agendas and Minutes
Business Impact Estimates
Capital Project Schedule
Census 2020
County Council
County Council Actions
County Council Meeting Calendar
County Council Proclamations
County Manager
County Ordinances
Financial Reports and Schedules
Home Rule Charter
Internal Auditor
Keep Volusia Beautiful: Anti-Littering Initiatives
Meeting Calendars
Organizational Chart
Public Records Requests
Speakers Bureau
Special Districts
State of the County Reports & Videos
Volusia County Elected Officials Roundtable
Watch Live Meetings

County Administration
Thomas C. Kelly Administration Center
123 W. Indiana Ave.

Class A vehicles (gross vehicle weight rating at 5,999 pounds or less or a vehicle carrying a vessel 15 feet or less in length):		
	Trespass tow (flat rate)	\$135.00
	Nonconsensual tow (flat rate)	\$150.00
	Trespass or nonconsensual tow, per mile over initial 10 miles, per full extra mile	\$5.00
	Trespass or nonconsensual tow, time spent beyond 15 min initial (15-minute block)	\$35.00
	Trespass or nonconsensual tow storage, inside storage per day	\$40.00
	Immobilization	\$75.00
	Trespass outside storage, per day	\$30.00
	Nonconsensual outside storage, per day	\$35.00
Class B vehicles (gross vehicle weight rating at 6,000 pounds or more, but less than 15,000 pounds or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length):		
	Trespass tow (flat rate)	\$300.00
	Nonconsensual tow	\$350.00
	Trespass or Nonconsensual tow, per mile over initial 10 miles, per full extra mile	\$6.00
	Trespass or Nonconsensual tow, time spent beyond 15 min initial (15-minute block)	\$70.00
	Trespass or Nonconsensual tow storage, inside storage per day	\$50.00
	Immobilization	\$75.00
	Outside storage, per day	\$50.00
Class C vehicles (gross vehicle weight rating at 15,001 or more pounds, but less than 25,999 pounds or vehicle carrying a vessel more than 22 feet in length):		
	Trespass tow (flat rate)	\$450.00
	Nonconsensual tow	\$500.00
	Nonconsensual tow, per mile over initial 10 miles, per full extra mile	\$7.00
	Trespass or nonconsensual tow, time spent beyond 15 min initial (15-minute block)	\$110.00
	Trespass or nonconsensual tow storage, inside storage per day	\$75.00
	Outside storage per day	\$75.00
Class D vehicles (gross vehicle weight rating at more than 26,000 pounds):		
	Trespass tow (flat rate)	\$600.00
	Nonconsensual tow	\$650.00
	Nonconsensual tow, per mile over initial 10 miles, per full extra mile	\$8.00
	Trespass or nonconsensual tow, time spent beyond 15 min initial (15-minute block)	\$145.00
	Trespass or nonconsensual tow storage, inside storage per day	\$80.00
	Outside storage per day	\$80.00
Separate Charges		
	Air Bags (at cost, not to exceed)	\$4,000.00
	Bobcat, skidsteer, forklift (per hour time on scene)	\$300.00
	Maintenance of traffic (MOT) setup - Rate (per hour)	\$135.00
	Hazardous spill kits per bag	\$60.00
	Rotator (All Classes A-D, 50-ton hourly rate, minimum 2 hours)	\$1,300.00
	Notice of Lein Administrative Charge	\$150.00

See [Sec. 118-98. - Establishment of rates; trespass and nonconsensual tows and immobilizations](#) for complete information on Trespass and nonconsensual tow fees.

DeLand, FL 32720

DeLand

386-736-2700

Daytona Beach

386-257-6000

New Smyrna Beach

386-423-3300

Osteen

386-574-0598

Citizens Hotline

866-345-0345



123 W. Indiana Ave
DeLand, FL 32720
(386) 736-2700

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Captain Fisher,

I am writing to respectfully explain why it would be beneficial for Arrow Service & Towing to adopt the newly established county ordinance for towing rates.

The original rates were set by the county more than 22 years ago. Since that time, the cost of operating a professional, compliant towing and recovery company has increased significantly. General liability insurance premiums have risen substantially, as have workers' compensation costs. Additionally, the average rate of pay for qualified operators has increased in order to retain experienced, properly trained personnel who can safely and efficiently handle crash recovery and roadway incidents.

Beyond labor and insurance, operational expenses have steadily climbed. Fuel costs remain volatile and consistently higher than in prior years. Required supplies such as oil dry, spill absorbent materials, and the proper disposal of contaminants all add to the cost of providing safe, responsible service at accident scenes. Maintaining compliant equipment and ensuring we meet environmental and safety standards is an ongoing investment.

For the average consumer, the impact of the updated rate structure is minimal. A standard flat-rate tow for a disabled vehicle would see only a \$25.00 increase, with the hook rate moving from \$125.00 to \$150.00. This modest adjustment helps align rates with current market realities while allowing us to continue providing prompt, professional service to the citizens of Port Orange. Additionally; this would relieve some pressure for us, with our \$5,000.00 monthly payment to The City of Port Orange.

Our goal is always to remain a reliable partner to the Port Orange Police Department while maintaining the high standards of safety, responsiveness, and professionalism that your officers and the community expect.

Please let me know if you have any additional questions. I would be happy to help in any way that I can.

Respectfully,

A handwritten signature in cursive script, appearing to read 'A Balboa'.

Amanda Balboa
Arrow Service & Towing
386-255-2138



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (B9) Approval of a Utility Easement to the City of Daytona Beach Shores on a portion of 2844 Ridge Road for Upgrades to the Force Main

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure 3 - Quality of Life

RECOMMENDED MOTION: Move to approve a grant of a Utility Easement to the City of Daytona Beach Shores over a portion of land located at 2844 Ridge Road and authorize Mayor and City Clerk to execute said easement.

SUMMARY: The City of Daytona Beach Shores (DBS) is upgrading its outdated force main sanitary sewer lines serving the north side of DBS. To start and complete this urgent project, DBS is in need of a 20-foot easement on the north side of the City of Port Orange (City) property located at 2844 Ridge Road.

The proposed method for sewer line installation will be jack and bore. This is a trenchless method used to install underground pipes and utilities by pushing a casing pipe through the earth while simultaneously removing soil with an auger. This technique avoids open-cut excavation, which minimizes surface disruption. This means that the City property should be minimally impacted by the installation of the lines, which will be several feet underground.



Photo showing the area of the proposed utility easement at 2844 Ridge Road

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Sewer Utility Easement to Daytona Beach Shore from COPO-Ridge Rd w exhibit	Sewer Utility Easement to Daytona Beach Shore from COPO-Ridge Rd w exhibit.pdf
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Steve Parnell
Christopher Wall
Steve Parnell
Sue Wang
Matthew Jones
Wayne Clark

Created/Initiated - 03/19/2026
Approved - 03/19/2026
Approved - 03/23/2026
Approved - 03/23/2026
Approved - 03/26/2026
Final Approval - 03/26/2026

PERMANENT UTILITY EASEMENT

THIS GRANT OF A PERMANENT UTILITY EASEMENT is made this ____ day of April, 2026, by and between CITY OF PORT ORANGE, FLORIDA, a chartered municipal corporation whose owner's address is 1000 CITY CENTER CIR, PORT ORANGE, FL 32129 (Grantor) and the City of Daytona Beach Shores, whose address is 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, a Florida municipality located in Volusia County, Florida (Grantee):

W I T N E S S E T H

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor grants, sells and conveys unto the Grantee, its successors and assigns, a permanent underground utility easement along, under, over and across certain real property located in Volusia County, Florida, more particularly described on the attached **Exhibit "A"**, made a part hereof by this reference.

The Permanent Underground Utility Easement shall authorize the Grantee to operate, maintain and repair underground utility improvements, including the right to transmit and convey public utilities through and under said land, together with the right to excavate and refill ditches and trenches for the purpose of maintaining and repairing said improvements. Easements will be returned to its original elevation and appearance at the expense of the Grantee. All underground utility connections will be reconnected at the expense of the Grantee.

The Grantee and its successors and assigns, together with the right to enter upon said lands and to construct and maintain public uses thereon, with all such fills, cuts, drains, pipelines, ditches, trenches and other incidents which said Grantee may deem necessary or convenient in connection therewith.

It is expressly understood and agreed that the terms, covenants and conditions of this Easement shall be and constitute a covenant running with and binding upon the premises described herein and shall constitute an obligation on said premises regardless of title or ownership thereof and regardless of any future change which may take place therein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOW]

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal on the day and year first above written.

WITNESSES:

Grantor:

CITY OF PORT ORANGE, FLORIDA

A Chartered Municipal Corporation

By: _____
Scott Stiltner, Mayor

Name: _____
1000 City Center Circle
Port Orange, FL 32129

Date: _____, 2026

Name: _____
1000 City Center Circle
Port Orange, FL 32129

Attest: _____
Robin L, Fenwick, City Clerk, MMC

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2026, by Scott Stiltner, Mayor, and Robin L. Fenwick, as City Clerk, both of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that each is duly authorized to execute the foregoing agreement on behalf of the city. They are personally known to me.

Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

PROPOSED 20' UTILITY EASEMENT

A PORTION OF BLOCK E, MCELROY'S BELLEVUE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 1, PAGE 98, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LYING IN SECTION 27, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PROPOSED UTILITY EASEMENT CONTAINS 7334 SQUARE FEET (MORE OR LESS).

1. THIS IS NOT A BOUNDARY SURVEY.
2. THE PURPOSE OF THIS SKETCH OF DESCRIPTION IS TO ESTABLISH AN EASEMENT FOR THE PURPOSES STATED.
3. NO CORNERS WERE SET AS PART OF THIS SKETCH OF DESCRIPTION.
4. THE BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE SOUTH RIGHT-OF-WAY LINE OF RIDGE ROAD BEING N89°25'35"E.

●	=	CHANGE IN DIRECTION(CORNERS NOT SET)	PB	=	PLAT BOOK
N	=	NORTH	MB	=	MAP BOOK
E	=	EAST	PG	=	PAGE(S)
S	=	SOUTH	ORB	=	OFFICIAL RECORD BOOK
W	=	WEST	R/W	=	RIGHT-OF-WAY
POC	=	POINT OF COMMENCEMENT	UE	=	UTILITY EASEMENT
POB	=	POINT OF BEGINNING			

CERTIFIED TO:

1. CITY OF DAYTONA BEACH

2.

3.

4.

PROJECT No.	3250001	DRAWN DATE	2025.OCT.16
		REVIEWED BY	S.MANOR
		APPROVED BY	S.MANOR
DRAWN BY	S. CHORA RUIZ	CLIENT FILE No	N/A

[illegible]

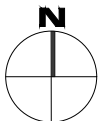
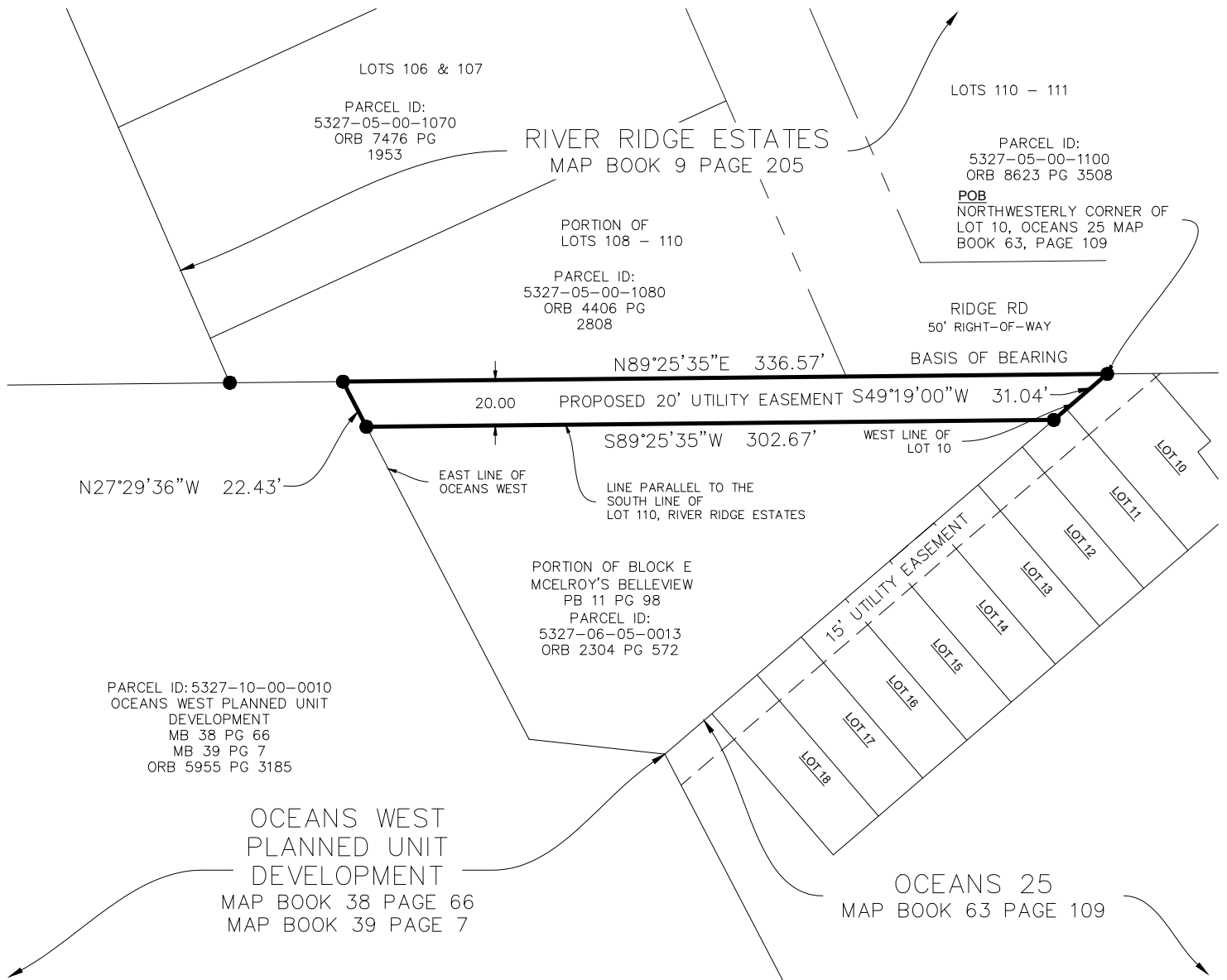
PROFESSIONAL SURVEYOR & MAPPER BUSINESS LICENSE | LB#7829

I HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION REPRESENTED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. IT HAS BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE PURSUANT TO TO CHAPTERS 177 AND 472 OF THE FLORIDA STATUTES. THIS SKETCH AND/OR REPORT IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR THE ELECTRONIC SIGNATURE IN COMPLIANCE WITH F.A.C. 5J-17.062(3) OF THE SIGNING SURVEYOR AND MAPPER.

SHERRY LEE MANOR, PSM - LS# 6961

SKETCH OF DESCRIPTION

PROPOSED 20' UTILITY EASEMENT



SHEET 2 OF 2
SEE SHEET 1 FOR LEGAL DESCRIPTION

20 UE CITY OF PORT ORANGE

PROJECT No.	3250001	DRAWN DATE	2025.10.16
		REVIEWED BY	S.MANOR
		APPROVED BY	S.MANOR
DRAWN BY	S.CHORA RUIZ	CLIENT FILE No.	N/A

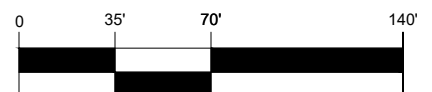
No.	DATE	BY	DESCRIPTION



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PROFESSIONAL SURVEYOR & MAPPER BUSINESS LICENSE | LB#7829

GRAPHIC SCALE



1 INCH = 70 FEET



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (F15) Appoint a new Volusia Flagler TPO member

DEPARTMENT: Council

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Nominate a Council Member to serve on the Volusia/Flagler TPO to replace Councilman Jonathan Foley.

SUMMARY: At the March 3 Council meeting, Councilman Jonathan Foley requested the appointment of a replacement member to the Volusia Flagler Transportation Planning Organization (TPO) due to changes in his work schedule that prevent him from attending meetings regularly.

PRESENTER: Jonathan Foley

ATTACHMENTS:

Amanda Bonin
Robin Fenwick
Wayne Clark

Created/Initiated - 03/18/2026
Approved - 03/18/2026
Final Approval - 03/23/2026



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (G16) Second Reading - Ordinance No. 2026-4 - LDC
Amendment/Chapters 2 and 16 - Outdoor Donation Bins & Temporary Storage
Containers (Case No. DCAM-2026-0001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2026-4.

SUMMARY: Planning Commission Recommendation (2/26/26): Recommended
Approval 5-0

Staff have been updating the Land Development Code (LDC) in phases over the past several years. The proposed amendments in this package are intended to enhance the existing Code as part of the City's ongoing maintenance efforts. The amendments address issues encountered in applying the Code, including regulations for outdoor donation bins and temporary storage containers.

CHAPTER 2 — DEFINITIONS AND INTERPRETATIONS AND CHAPTER 16 — MISCELLANEOUS REGULATIONS

The proposed amendment to Chapter 16 of the Land Development Code (LDC) establishes clear, consistent, and enforceable standards for outdoor donation bins, replacing the previous practice of classifying them as part of a "service area." Service area requirements in the LDC apply to mechanical equipment (HVAC units, meters, etc.) and elements that serve or are associated with a principal building use (dumpsters, tanks, etc.). Because donation bins are typically operated by separate organizations and are not an accessory to a principal building, staff is proposing specific requirements for donation bins.

Without regulations for the placement or maintenance of outdoor donation bins, bins can become unsightly, attract illegal dumping, create traffic or pedestrian hazards, and accumulate trash. Establishing requirements helps ensure bins are safe, accessible, and well-maintained. The following outdoor donation bins would not be permitted if the amendment is approved.



Example of existing donation bins that do not comply with proposed requirements

The amendment adds a definition for “donation bin” and establishes standards addressing location, size, appearance, number, operation, and maintenance. The regulations are designed to improve aesthetics, public safety, ensure site functionality, and provide clear enforcement mechanisms. Key provisions of the amendment include:

- **Permitted Locations:** Donation bins are permitted only on approved, developed, and occupied non-residential sites within commercial and industrial zoning districts, as well as on sites of nonprofit organizations and houses of worship.
- **Prohibited Locations:** Donation bins would not be permitted on residentially zoned properties, unoccupied sites, or within the Port Orange Town Center Community Redevelopment Area.
- **Quantity Limits:** One bin per parcel under five acres; two bins per parcel five acres or larger.
- **Placement & Safety Standards:** Bins must be located on paved surfaces, may not obstruct required parking, access drives, loading areas, or fire lanes, and must be securely anchored.
- **Setbacks:** Minimum 100-foot setback from residential uses or zoning districts and arterial roadways.
- **Size & Appearance:** Limited to 35 square feet in area and 7 feet in height; must be earth-tone or pastel in color.
- **Operation & Maintenance:** Items must be fully contained within the bin; no outdoor storage or processing permitted. Property owners and permit holders are jointly responsible for maintenance and compliance.
- **Signage:** Limited informational signage is permitted; no off-site commercial advertising allowed. Required charitable registration signage must comply with Florida Statutes.

The amendment would require City approval before any donation bin is placed. Applicants must submit a site plan or scaled drawing, bin specifications, and written property owner consent. Approval would be issued through a city permit.

Staff reviewed existing donation bins throughout the city and found that most do not meet the proposed standards. If adopted, existing bins would be required to obtain a permit and demonstrate compliance or be removed. This amendment provides a clear

regulatory framework to ensure donation bins are appropriately located, maintained, and compatible with surrounding development.

CHAPTER 16 — MISCELLANEOUS REGULATIONS

The proposed amendment to the Land Development Code (LDC) establishes regulations for temporary storage containers (e.g., PODS) on non-residential properties, which are not currently addressed in the LDC. These containers are commonly used during construction, renovation, tenant improvements, repairs, or damage restoration to store furniture, equipment, tools, and materials.

The LDC currently has no specific standards for temporary storage containers on non-residential properties associated with construction and renovation projects. Under the proposed amendment, temporary storage containers would be permitted only in association with active building permits or approved site improvements. Containers would be allowed for the duration of the permit and must be removed prior to issuance of a Certificate of Occupancy, Certificate of Completion, or final inspection. The Administrative Official, (defined in the Code of Ordinances as any department head reporting to the City Manager) may grant approval for unique circumstances or extensions when warranted. This amendment provides consistent standards for temporary storage containers on non-residential properties while ensuring compliance with construction and site improvement regulations.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance 2026-4	Ordinance 2026-4.pdf
2.	STAFF REPORT - DCAM-26-0001	STAFF REPORT - DCAM-26-0001.pdf
3.	Business Impact Estimate - DCAM-26-0001 - ORD 2026-4	Business Impact Estimate - DCAM-26-0001 - ORD 2026-4.pdf

Amanda Bonin

Created/Initiated - 03/23/2026

ORDINANCE NO. 2026-4

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING THE LAND
DEVELOPMENT CODE CHAPTER 2 DEFINITIONS AND
INTERPRETATIONS AND CHAPTER 16 MISCELLANEOUS
REGULATIONS, RELATING TO OUTSIDE STORAGE,
ESTABLISHING STANDARDS FOR OUTDOOR DONATION
BINS, AND ESTABLISHING STANDARDS FOR
TEMPORARY STORAGE CONTAINERS ON NON-
RESIDENTIAL PROPERTIES ASSOCIATED WITH
CONSTRUCTION AND RENOVATION PROJECTS;
PROVIDING FOR REPEAL OF CONFLICTING
ORDINANCES; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed amendments are necessary to improve the content of the existing Land Development Code ("Code") as part of an ongoing maintenance effort to make the Code more efficient in its application as well as updated to respond to the current conditions in the community; and

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Section 2 of the Land Development Code, to read as follows:

Chapter 2 DEFINITIONS AND INTERPRETATIONS

Section 2: - Definitions.

Donation bin. Any stationery or free-standing container, receptacle or similar device that is located outdoors on any property within the city and is used for the collection of donated items, such as clothing, books, shoes or other non-perishable personal property.

SECTION 2: The City Council of the City of Port Orange hereby amends Chapter 16, Section 1 of the Land Development Code, to read as follows:

Chapter 16 MISCELLANEOUS REGULATIONS

Section 1: Accessory uses and structures.

[No change to subsections (a) through (d)]

(e) *Outside storage.* Outside storage of new and used equipment and materials shall be regulated as follows.

(1) *Residential uses.*

- (a) Outside storage of materials and equipment shall be restricted to the rear yard area and screened by an opaque fence or hedge so that such materials are not visible from any public right-of-way or adjoining lot.
- (b) Materials and equipment such as appliances, motor vehicle parts, and equipment and materials used as part of a business conducted off-site shall not be stored outside. Additionally, unlicensed/unregistered, disabled, abandoned, or inoperable motor vehicles shall not be stored outside. Unlicensed/unregistered, disabled, abandoned or inoperable recreational vehicles or equipment (as defined in section 70-48 of this Code of Ordinances) shall not be stored outside unless awaiting repair and stored pursuant to section 70-48(h). This prohibition shall not apply to licensed/registered and operable motor vehicles, recreational vehicles and equipment and other such vehicles, which are merely being parked on-site. However, such vehicles shall be subject to other provisions of this code, such as those relating to driveways, which may regulate or restrict their location on site.
- (c) Unless otherwise stated, temporary storage containers (e.g. PODS) shall be restricted to the driveway for a period not to exceed 72 hours in any continuous 30-day period. However, if said container is placed as permitted and is related to an improvement that has been issued a building permit, said container will be permitted for the duration of the

building permit and shall be removed prior to the city's issuance of a certificate of occupancy or completion or final inspection, as applicable. The use of a temporary storage container may also be allowed for other site improvements or scenarios that may not require a permit if approved by the Administrative Official.

- (2) *Office uses.* Outside storage of equipment or materials shall not be permitted for office uses.
- (3) *Commercial uses.* Outside storage of equipment and materials shall be permitted only when associated with a commercial use and located in designated areas approved for such display as part of a development plan, or as part of a building permit, if the required right-of-way landscape buffer is provided. Additional restrictions are specified below.
 - (a) Storage of licensed and operable motor vehicles, boats, recreational vehicles, tractor trailers, storage trailers and other such vehicles shall be located out of view from any abutting rights-of-way, private streets, waterways and residential uses.
 - (b) Outdoor display and/or storage may be permitted in conjunction with special sales events such as those permitted under chapter 58, article III, Code of Ordinances, and other uses when permitted by special exception or approved as part of a development plan.
 - (c) Licensed and inoperable motor vehicles awaiting repair may be stored within screened areas on the site of motor vehicle repair facilities and motor vehicle service centers, provided that no such vehicle shall be stored for more than 28 consecutive days.
- (4) *Industrial uses.* Outside storage of equipment or materials shall be permitted for industrial uses, when in compliance with the following requirements.
 - (a) All storage areas shall be enclosed by an opaque wall, fence or landscaping of sufficient maturity, density and height to screen such areas from any public right-of-way or adjoining property.
 - (b) All equipment or materials shall be secured, if necessary, to withstand winds.
 - (c) Screening shall not be required around storage areas for operable motor vehicles and landscape materials.
 - (d) No licensed and inoperable motor vehicles shall be stored for a period exceeding 28 consecutive days within screened areas on the site of motor vehicle repair facilities and motor vehicle service centers.
- (5) Temporary storage containers (e.g. PODS) on non-residential sites shall only be allowed in relation to an improvement that has been issued a development permit. Said container shall only be permitted for the duration of the construction and shall be removed prior to the city's issuance of a certificate of occupancy, certificate of completion, or final inspection, as applicable. The use

of a temporary storage container may also be allowed for other site improvements or scenarios that may not require a development permit if approved by the Administrative Official.

(6) *Outdoor donation bins.* The requirements of this part apply to donation bins (or boxes) which function as accessory uses or structures, or other temporary structures when used for the purpose of collecting recyclable materials and/or re-sellable goods. In addition to any applicable zoning regulations, all donation bins allowed as accessory uses or structures under this part shall conform to the following requirements.

(a) No donation bin shall be placed in the City until approval from the City as provided in this section is obtained.

(b) In order to obtain approval for a donation bin to be placed in the City, a permit application shall be submitted with the following information:

1) A scaled drawing showing the location of the proposed donation bin and indicating the donation bin size and color, signage, and any other information deemed necessary to review the request.

2) The name, address and telephone number of the permittee.

3) Written consent of the property owner or legal designee to establish the donation bin in the requested location on form provided by the City.

(c) Following approval by the city for the placement of a donation bin, a donation bin shall not be relocated from the approved location to a different location on the site or a new site without obtaining a new permit from the city.

(d) A donation bin shall only be located upon improved, level, paved surfaces on an occupied non-residential building site in a commercial and industrial zoning district, or on a building site of a non-profit organization or house of worship, excluding any property located within the boundary of the Port Orange Town Center Community Redevelopment Area.

(e) No donation bin shall be permitted on any building site that is developed but unoccupied. If a building site becomes unoccupied due to a business relocation or closing after approval to place a donation bin, then the donation bin must be removed.

(f) A donation bin shall be located on an improved impervious surface and shall be anchored to such surface in such a manner that in the event of severe weather, the bin is not overturned or moved.

(g) A donation bin shall be removed from its permitted location within 24 hours of the issuance of a hurricane watch by a recognized governmental agency. The removal of a donation bin is the responsibility of the permittee and/or property owner. If not removed within this time period, the city may remove, store or dispose of the donation bin.

- (h) A parcel or lot that is less than five acres (5) in area shall be limited to one (1) donation bin and a parcel or lot that is five (5) acres or more in area shall be limited to two (2) donation bins.
- (i) A donation bin shall not be located in any of the following areas on a site:

 - (1) Required parking spaces;
 - (2) Public or private right-of-way;
 - (3) Drive aisles;
 - (4) Required landscaped areas or bufferyards;
 - (5) Intersection and driveway visual clearance zones;
 - (6) 100 feet from an arterial right-of-way
 - (7) Pedestrian circulation areas; or
 - (8) Within one hundred (100) feet from a single-family residentially zoned district.
- (j) The receiving door on a donation bin shall be oriented toward the interior of the parcel or lot and away from a public right-of-way.
- (k) No donation bin shall exceed 35 square feet in area and 7 feet in height.
- (l) Donation bins shall be painted with earth-tone or pastel colors, as defined by this code.
- (m) Notwithstanding the signage requirements of Florida Statutes § 496, as amended, a permittee may install additional informational or promotional signage on a permitted donation bin, subject to the following limitations:

 - (1) Additional signage may include non-commercial information regarding the permittee, operator, or benefiting nonprofit organization, as well as logos or messaging about donations. Such signage shall be allowed on no more than two sides of the donation bin, with one side being the front or depositing side.
 - (2) The total area of all additional signage on the bin shall not exceed four (4) square feet.
 - (3) Additional signage shall not obscure, cover, or interfere with the visibility of the statutorily required information, including the operator/permittee name, contact information, or required disclosure statements under Florida Statutes § 496.
 - (4) Donation bins shall not be used for off-site advertising of unrelated commercial activities.
- (n) A donation bin shall be maintained in a manner so as not to constitute a nuisance with regard to odor, noise, rust, or other environmental effects. The appearance of a donation bin shall at all times be maintained to be rust-free, properly painted, have legible signage, graffiti free.
- (o) No outdoor display or storage of materials shall be permitted. A donation bin shall be emptied immediately upon having items overflowing or not contained in the bin (i.e. on top of the bin, on the ground near the bin, or

placed on something near the bin rather than contained in the bin). No processing shall take place on-site. The permittee and property owner shall be individually and jointly responsible for abating and removing all overflowing material, garbage, trash, debris and other material in the area surrounding any donation bin.

(p) The owner of the donation bin, the permittee, and the owner of any private property upon which a violation of these regulations occur may be held jointly and individually liable and responsible for such violation.

[No change to subsection (f)]

SECTION 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 5. The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 6. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 7. This Ordinance shall take effect immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney



STAFF REPORT

CASE NO. DCAM-26-0001

LDC TEXT AMENDMENT / CHAPTERS 2, 14, 15, and 16

REQUEST:	To amend Chapters 2, 14, 15, and 16 of the Land Development Code (LDC) regarding donation bins, temporary storage containers, and colors as part of an effort to update the LDC.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	Recommended Approval 5-0 (February 26, 2026)
CITY COUNCIL:	March 17, 2026

INTRODUCTION:

Staff has been updating the Code in phases over the past several years. Prior amendments included updates to sign regulations, the “green” building initiative, erosion control, updates to Building Code references, county-wide Traffic Impact Analysis standards, school concurrency, Construction Standards modifications, impact fees, site plan and subdivision regulations, removal of select uses from the Ridgewood Corridor zoning district, zero lot line homes in the R-2D zoning district, microbreweries, architecture requirements, economic development, Ridgewood targeted businesses, tree preservation, entertainment districts, home based businesses, docks and boathouses, and others.

SUMMARY OF PROPOSED AMENDMENT

The proposed amendments in this package are intended to enhance the existing Code as part of the City’s ongoing maintenance efforts. The amendments address issues encountered in applying the Code, including regulations for outdoor donation bins, temporary storage containers, the method for determining whether a color qualifies as an earth tone or pastel, and clarification of color regulations for murals.

CHAPTER 2 - DEFINITIONS AND INTERPRETATIONS AND CHAPTER 16 - MISCELLANEOUS REGULATIONS

The proposed amendment to the Land Development Code (LDC) establishes clear, consistent, and enforceable standards for outdoor donation bins, replacing the previous practice of classifying them as part of a “service area.” Service area requirements in the LDC are intended to apply to mechanical equipment (HVAC units, meters, etc.) and elements that serve or are associated (dumpster, tanks,) with a principal building use. A freestanding donation bin is not considered accessory to a primary building on a site, as it is typically operated and maintained by a separate organization rather than the business located on the property.

The proposed amendment defines donation bins and provides specific requirements that clarify allowed locations, size, appearance, number, and the operation of a donation bin, while maintaining the original intent of service area standards for building-related elements.

In developing the text amendment, City staff conducted a comprehensive review of donation bins on developed sites and other codes adopted by other local governments. This review considered site functionality, safety, and operations in addition to aesthetics and screening.

The proposed amendment would establish the following requirements within Chapter 16 of the Land Development Code (LDC) that must be met for the placement of donation bins within the City. These requirements are intended to address aesthetics, public safety, construction quality, and overall site functionality.

- Allowed locations: A donation bin may only be located on an approved developed and occupied non-residential site located within a commercial (NC, CC, HC, ICD, RD, PCD) or industrial (CI, LI) zoning district, or on the site of a non-profit organization or house of worship.
- Prohibited locations: A donation bin shall not be permitted on a site with a residential zoning district, a developed but unoccupied site or any site within the Port Orange Town Center Community Redevelopment Area. If a site becomes unoccupied due to business relocation or closure, the donation bin shall be removed.
- Location criteria: A donation bin shall be located on improved, level, paved surfaces that are part of a larger, developed, and occupied site. A donation bin shall not be placed in or block access to any code required parking spaces, access drives, loading or service area, or fire lane. A donation bin shall be securely anchored to prevent overturning or movement during severe weather and sited to provide adequate access and maneuverability for servicing vehicles without obstructing any access drives.
- Quantity: A parcel or lot that is less than five acres (5) in area shall be limited to one (1) donation bin and a parcel or lot that is five (5) acres or more in area shall be limited to two (2) donation bins.
- Parking and access drives: A donation bin shall not be placed in an access drive or block access to any access drive or parking space required by the LDC.
- Site design and safety: A donation bin shall be securely anchored to prevent overturning or movement during severe weather and must be located in a manner that provides adequate driveway access and maneuverability for service and loading vehicles.
- Orientation: The receiving door for a donation bin shall face the interior of the site and away from public rights-of-way and access drives.

- Size and appearance: A donation bin cannot exceed 35 square feet in area or 7 feet in height and must be painted in an earth-tone or pastel color as defined by the LDC.
- Setbacks: A donation bin shall not encroach in required landscaping or landscape buffer and shall be setback at least 100 feet from any residential use or zoning boundary, and 100 feet from an arterial right-of-way (Dunlawton Avenue, Nova Road, Clyde Morris Boulevard, Ridgewood Avenue, Taylor Road, Spruce Creek Road, and Williamson Boulevard).
- Use and maintenance: Donated items must be fully contained within a donation bin, with no outdoor display or on-site processing permitted. A donation bin shall be properly maintained to prevent nuisances such as odor, noise, rust, or graffiti, and all required signage must remain legible. Any overflowing or discarded items, trash, debris and other material or items in the area surrounding a donation bin must be removed immediately, with the permittee and property owner jointly responsible for maintaining the surrounding area free of debris.
- Liability: The permittee and property owner may be held individually and jointly liable for violations.
- Relocation: A donation bin shall not be relocated from a permitted location to a different location on a site or a new site without obtaining a new permit from the city.
- Signage: A donation bin shall not be used for off-site advertising of commercial activities. A donation bin shall provide all signage required by Florida Statutes § 496. In addition, a permittee may install a maximum of four (4) square feet of additional informational signage on no more than two sides of the donation bin.

The proposed amendment would establish specific regulations for the review and approval of donation bins within Chapter 16 of the Land Development Code (LDC). Under the proposed amendment, city approval would be required prior to the placement of any donation bin within the city. This approval would be issued through a city permit that authorizes the location, number, and appearance of a donation bin(s).

To obtain approval, any person or organization making the request to place a donation bin within the City would be required to submit the following for staff to review for compliance with the LDC.

- 1) A scaled site plan or drawing depicting the proposed location(s) of the donation bin(s);
- 2) A photograph or illustrative drawing of the proposed donation bin(s), including dimensions, color, signage, and any other information deemed necessary to evaluate the request; and
- 3) Written consent from the property owner to allow placement of the donation bin in the requested location.

Based on a review of existing donation bins on developed sites in Port Orange, the majority do not comply with the proposed amendment and would need to be removed. The following photographs illustrate donation bins within the city that do not comply with the proposed requirements due to color, quantity on a site, placement, location, and signage. If the text amendment is adopted, these bins would be required to be removed or relocated elsewhere on the property, subject to issuance of the appropriate permit.



Example of existing donations bins that do not comply with proposed requirements

If this amendment is approved, Code Enforcement has acknowledged that they will contact all property owners with a donation bin to notify them that either the property owner or the organization that owns the bin must apply for a permit. Donation bins for which a valid permit is issued may remain in place. Any donation bin for which a permit is not submitted or approved must be removed by the property owner or face Code Enforcement action.

CHAPTER 16 - MISCELLANEOUS REGULATIONS

The Land Development Code (LDC) currently regulates temporary storage containers (e.g., PODS) on residential properties in Chapter 16; however, the LDC does not address their use on non-residential properties. Temporary storage containers are commonly utilized in non-residential and residential construction and renovation projects to store furniture, inventory, equipment, tools, and building materials associated with interior remodels, tenant improvements, structural repairs, additions, and damage restoration.

Although permanent outdoor storage is permitted for certain commercial and industrial uses, those regulations apply to permanent outdoor storage areas that must be identified on an approved development plan and screened from public rights-of-way. As such, the LDC currently contains no specific standards for temporary storage containers on non-residential properties when associated with a construction and renovation project.

The proposed amendment would establish regulations for temporary storage containers on non-residential properties consistent with those applicable to residential properties.

Under the proposed language, temporary storage containers would be permitted only in association with improvements for which a building permit has been issued, or for other site improvements not requiring a development permit, subject to approval by the Administrative Official. The container would be permitted only for the duration of the active building permit and must be removed prior to the City's issuance of a Certificate of Occupancy, Certificate of Completion, or final inspection. *The Administrative Official may also approve temporary storage containers for unique circumstances that do not require a building permit or for time extensions when warranted.*

CHAPTER 2 - DEFINITIONS AND INTERPRETATIONS AND CHAPTER 14 ARCHITECTURAL DESIGN

The Land Development Code (LDC) currently requires that the color of structures other than single-family home, duplex, or manufacture home be limited to earth-tones or pastels, with other colors, excluding fluorescents, not exceeding twenty percent of any single elevation. The proposed amendment **does not change** the allowed colors for a non-residential structure; rather, it updates the method for determining whether a color qualifies as an earth tone or pastel to align with current paint industry standards.

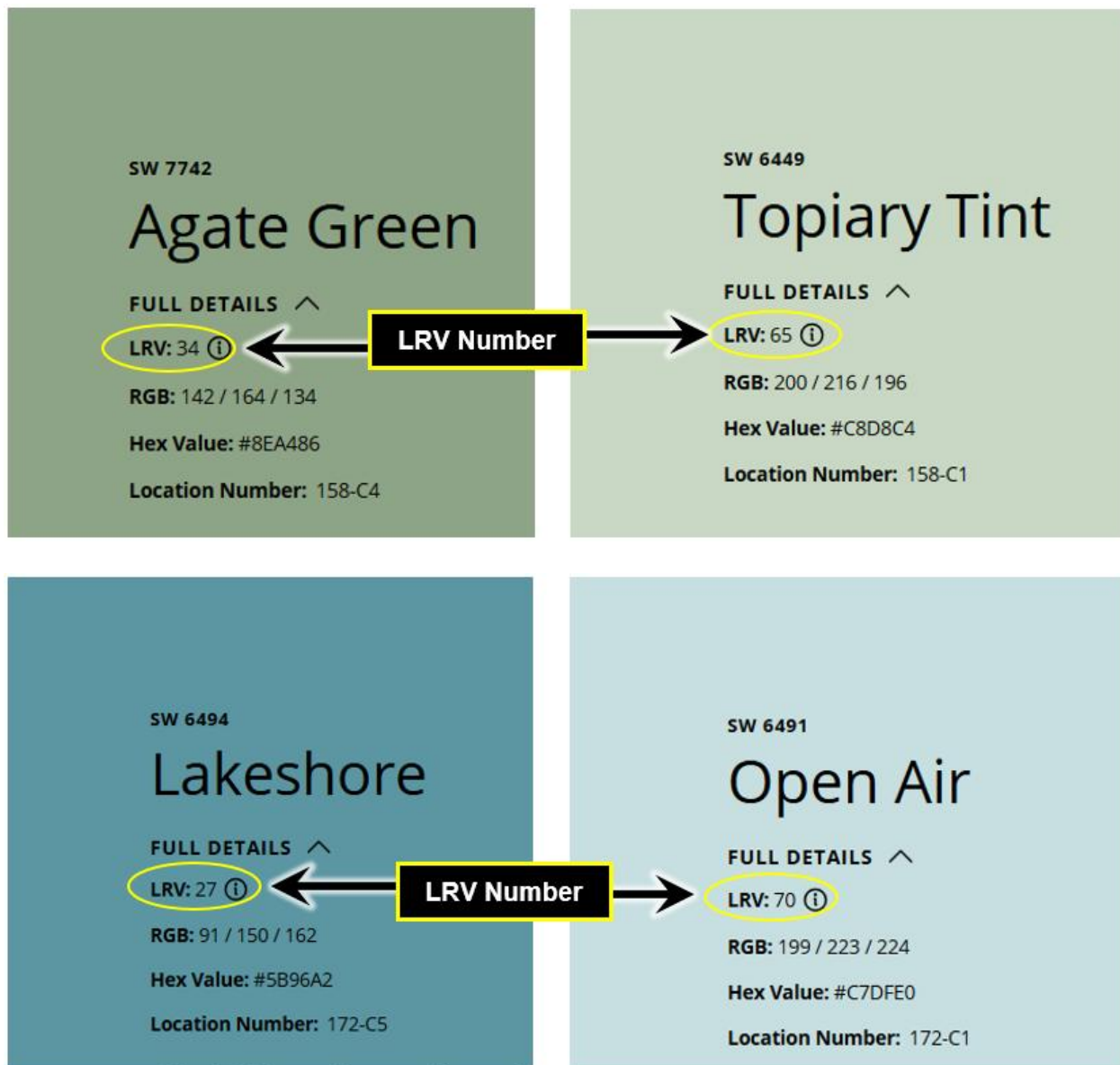
The current LDC defines colors based on the percentage of black or white in a given hue. However, this method is outdated, as modern paint colors are mixed from multiple bases and cannot be accurately measured by black or white content alone. Today, the paint industry uses Light Reflectance Value (LRV) as an objective and measurable standard for determining a color's lightness or darkness. This proposed amendment updates the LDC to align with current paint industry standards, ensuring a consistent and accurate method for determining whether a color qualifies as an earth tone or pastel.

Light reflectance value (LRV) is a measure of visible and usable light that is reflected from a surface when illuminated by a light source on a zero (0) [absolute black] to 100 [pure white] scale. The higher the LVR, the lighter and brighter the color. The lower the LVR the darker, more saturated the color. The LVR numeric scale is measurable and listed on all paint chips and samples. The proposed amendment establishes the LRV limits for an earth-tone color at a LRV of 25 or greater and a pastel color with light-toned colors with an LRV of 80 or greater and peaches, pinks, lavender, blues and greens with an LRV of 65 or greater.

In preparing this amendment, City staff consulted with employees at Home Depot, Lowe's, and Sherwin-Williams to confirm that LRV is the current standard used in their stores and to verify that it is the recognized method for measuring a color's lightness and brightness.

Below are paint sample cards from the Sherwin-Williams paint store illustrating two shades of green from the same fan deck strip (No. 158). A fan deck strip is a series of related paint colors grouped within a manufacturer's color system and displayed together on a single removable strip within a larger fan deck. These strips typically present variations of the same hue arranged from lighter to darker tones based on their Light Reflectance Value (LRV), which measures the amount of visible light a color reflects on a scale from 0 (black) to 100 (white).

For example, within Strip No. 158, *Agate Green* has an LRV of 34 and is classified as an earth tone, while *Topiary Tint* has an LRV of 65 and is classified as a pastel color. Although both colors are green and part of the same color family, the difference in LRV demonstrates a substantial variation in depth and brightness. Also, within Strip No. 172, *Lakeshore* has an LRV of 27 and is classified as an earth tone, while *Open Air* has an LRV of 70 and is classified as a pastel color. Although both colors are blue and part of the same color family, the difference in LRV demonstrates a substantial variation in depth and brightness.



Examples of paint sample cards from Sherwin-Williams showing the LRV for each color

CHAPTER 15 - SIGNS

The City's Land Development Code establishes color standards for non-residential buildings, generally requiring exterior colors to be earth tones or pastels. These standards ensure compatibility with other buildings and maintain a cohesive visual character. However, existing code does not specifically address murals and their unique role in public art and creativity. The code currently allows murals to be on a principal structure, accessory structure, fence or wall, or other structure on a commercial lot, but did not address allowed colors.

The proposed text amendment is to clarify that a mural shall not be subject to the color regulations otherwise required for buildings, with the exception that reflective or fluorescent colors shall not be used and allows murals to use colors beyond earth tones and pastels to encourage creativity and recognize murals as unique works of art. Reflective and fluorescent paints remain prohibited to maintain safety and visual appropriateness, while providing clear guidance for staff and property owners.

RECOMMENDATION

Approval to amend Chapters 2, 14, 15, and 16 of the Land Development Code as discussed in this staff report.



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. 2026-4: LDC TEXT AMENDMENT / CHAPTERS 2 and 16 (Case No. DCAM-26-0001)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed Land Development Code amendments in this package are intended to enhance the existing Code as part of the City's ongoing maintenance efforts. The amendments address issues encountered in applying the Code, including regulations for outdoor donation bins and temporary storage containers.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

N/A

4. Additional information the governing body deems useful² (if any):

N/A

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (G17) Second Reading - Ordinance No. 2026-5 - LDC
Amendment/Chapters 2, 14, and 15 - Measurement to Determine Paint Color & Paint
Requirements for Murals (Case No. DCAM-2026-0001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2026-5.

SUMMARY: Planning Commission Recommendation (2/26/26): Recommended
Approval 5-0

Staff has been updating the Land Development Code (LDC) in phases over the past several years. The proposed amendments in this package are intended to enhance the existing Code as part of the City's ongoing maintenance efforts. The amendments address issues encountered in applying the Code, including the method for determining whether a color qualifies as an earth tone or pastel, and clarification of color regulations for murals.

CHAPTER 2 — DEFINITIONS AND INTERPRETATIONS AND CHAPTER 14 — ARCHITECTURAL DESIGN

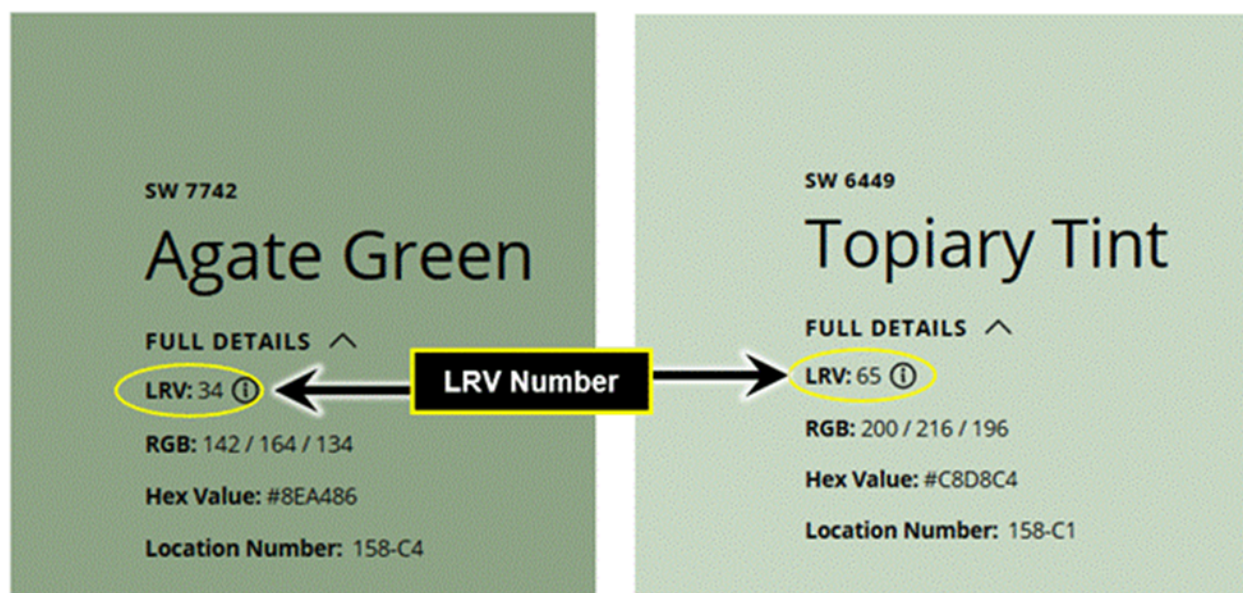
The Land Development Code (LDC) currently requires that the color of structures other than single-family homes, duplexes, or mobile homes be limited to earth tones or pastels, with other colors, excluding fluorescents, not exceeding twenty percent of any single elevation. The proposed amendment does not change the allowed colors for a non-residential structure; rather, it updates the method for determining whether a color qualifies as an earth tone or pastel to align with current paint industry standards.

Since the mid-1990's, the LDC has defined earthtone and pastel colors based on the percentage of black or white in a given hue. However, this method is outdated, as modern paint colors are mixed from multiple bases and cannot be accurately measured by black or white content alone. Today, the paint industry uses the Light Reflectance Value (LRV) as an objective, measurable standard to determine a color's lightness or darkness. This proposed amendment updates the LDC to align with current paint industry standards, ensuring a consistent, accurate method for determining whether a color qualifies as an earth tone or a pastel.

Light Reflectance Value (LRV) is a measure of visible and usable light that is reflected

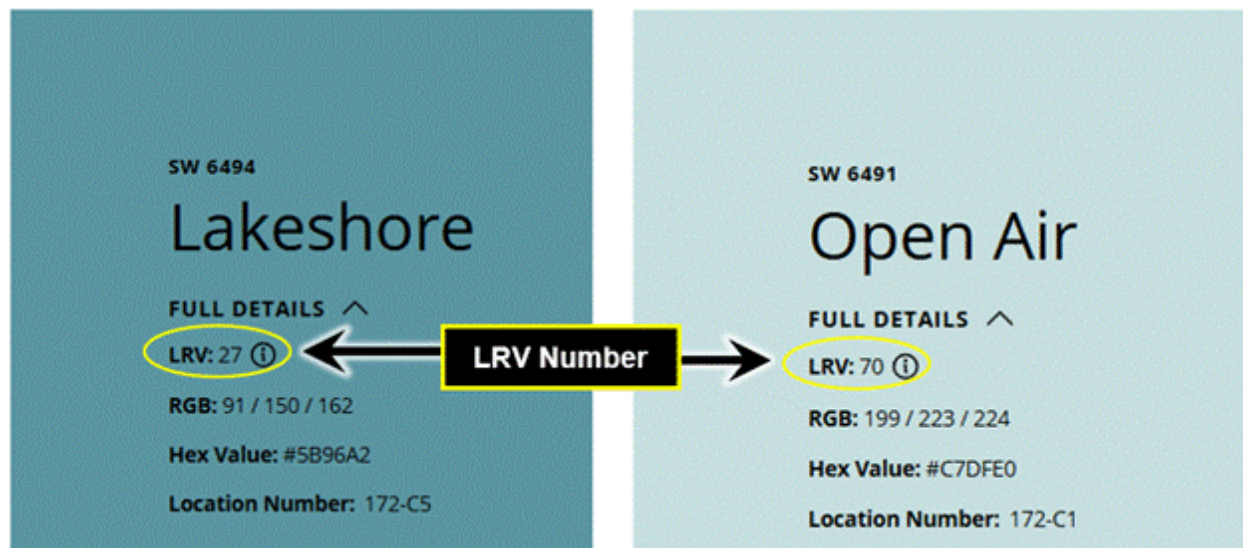
from a surface when illuminated by a light source on a zero (0) [absolute black] to 100 [pure white] scale. The higher the LRV, the lighter and brighter the color. The lower the LRV, the darker, more saturated the color. The LRV numeric scale is measurable and listed on all paint chips and samples. The proposed amendment establishes LRV limits for earth tones with an LRV of 25 or greater, pastels with an LRV of 80 or greater, and peaches, pinks, lavender, blues, and greens with an LRV of 65 or greater. In preparing this amendment, City staff consulted with employees at Home Depot, Lowe's, and Sherwin-Williams to confirm that LRV is the current standard used in their stores and to verify that it is the recognized method for measuring a color's lightness and brightness.

Below are paint sample cards from Sherwin-Williams illustrating two shades of green. Agate Green has an LRV of 34 and is classified as an earth tone, while Topiary Tint has an LRV of 65 and is classified as a pastel color. Although both colors are green and part of the same color family, the difference in LRV demonstrates a variation in depth and brightness.



Examples of paint sample cards from Sherwin-Williams showing the LRV for earth tone and pastel colors

Below are paint sample cards from Sherwin-Williams illustrating two shades of blue. Lakeshore has an LRV of 27 and is classified as an earth tone, while Open Air has an LRV of 70 and is classified as a pastel color. Although both colors are blue and part of the same color family, the difference in LRV demonstrates a variation in depth and brightness.



Examples of paint sample cards from Sherwin-Williams showing the LRV for earth tone and pastel colors

CHAPTER 15 - SIGNS

The City's Land Development Code establishes color standards for non-residential buildings, generally requiring exterior colors to be earth tones or pastels. These standards ensure compatibility with other buildings and maintain a cohesive visual character. However, the existing code does not specifically address murals and their unique role in public art and creativity. The code currently allows murals on a principal structure, an accessory structure, a fence or wall, or another structure on a commercial lot, but does not address the allowed colors.

The proposed text amendment clarifies that a mural shall not be subject to the color regulations otherwise required for buildings, except that reflective or fluorescent colors shall not be used, and allows murals to use colors beyond earth tones and pastels to encourage creativity and recognize murals as unique works of art. Reflective and fluorescent paints remain prohibited to maintain safety and visual appropriateness, while providing clear guidance for staff and property owners.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2026-5	Ordinance No. 2026-5.pdf
2.	STAFF REPORT - DCAM-26-0001	STAFF REPORT - DCAM-26-0001.pdf
3.	Business Impact Estimate - DCAM-26-0001 - ORD 2026-5	Business Impact Estimate - DCAM-26-0001 - ORD 2026-5.pdf

Amanda Bonin

Created/Initiated - 03/23/2026

ORDINANCE NO. 2026-5

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 2 DEFINITIONS AND INTERPRETATIONS, CHAPTER 14 ARCHITECTURAL DESIGN, AND CHAPTER 15 SIGNS, RELATING TO DESIGN CRITERIA, UPDATING THE METHOD FOR DETERMINING WHETHER A COLOR QUALIFIES AS AN EARTH TONE OR PASTEL TO ALIGN WITH CURRENT PAINT INDUSTRY STANDARDS; RELATING TO PERMANENT SIGN TYPES, SPECIFICALLY MURALS, CLARIFYING THAT MURALS ARE EXCLUDED FROM PAINT REGULATIONS, EXCEPT THAT REFLECTIVE AND FLUORESCENT PAINTS REMAIN PROHIBITED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed amendments are necessary to improve the content of the existing Land Development Code ("Code") as part of an ongoing maintenance effort to make the Code more efficient in its application as well as updated to respond to the current conditions in the community; and

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Section 2 of the Land Development Code, to read as follows:

Chapter 2 DEFINITIONS AND INTERPRETATIONS
Section 2: - Definitions.

Earth-tones. Earth tones ~~colors shall include shades of brown, taupe, beige, terra cotta, olive, sage, and grey, with a *Light Reflectance Value* (LRV) of 25 or greater. shall include the following colors:~~

- ~~(a) Any tint or tone of brown, including beige, tan, ocher and olive.~~
- ~~(b) Any tone of green, having a minimum black content of six percent.~~
- ~~(c) Any tone of orange (warm red and yellow base), having a minimum black content of three percent.~~
- ~~(d) Any warm or cold shade of gray.~~
- ~~(e) Any tone of yellow, having a minimum black content of five percent.~~
- ~~(f) Any tone of warm red, having a minimum black content of five percent and a minimum warm red content of 45 percent.~~
- ~~(g) White.~~

~~Earth tones shall not include any metallic colors.~~

Fluorescent. A color, often called "neon," with exceptionally bright, high-visibility hues that appear to glow, particularly under sunlight or ultraviolet (UV) light by absorbing UV light and re-emitting it as visible light, causing it to appear to glow and appear brighter than conventional colors.

Light reflectance value (LRV). A measure of visible and usable light that is reflected from a surface when illuminated by a light source.

Pastel. Pastel colors include, but not limited to, white and light-toned colors with a *Light Reflectance Value* (LRV) of 80 or greater and peaches, pinks, lavender, blues and greens with a *Light Reflectance Value* (LRV) of 65 or greater.

SECTION 2. The City Council of the City of Port Orange hereby amends Chapter 14, Section 4 of the Land Development Code, to read as follows:

Chapter 14 - ARCHITECTURAL DESIGN

Section 4: Design criteria:

[No change to subsections (a) through (c)]

(d) *Colors.* Building colors shall be coordinated and applied consistently on all building elevations. Colors shall be earth-tones and pastels. ~~The selection of earth-tones shall be in accordance with the definition provided in this code. The selection of pastels shall be limited to those colors having a minimum white content of 90 percent.~~ Other colors, excluding fluorescents, may be permitted as accent colors, not to exceed 20 percent of the surface area of any one elevation.

- (1) The requirement for earth-tones and pastels shall not apply to colors commonly found in natural materials such as brick or stone, unless such material has been artificially colored in a manner which would be contrary to the intent of these regulations.
- (2) A color or color scheme which is directly inherent to a unique recognized architectural style, but not otherwise in compliance with this section may be permitted through the development plan approval process.

SECTION 3. The City Council of the City of Port Orange hereby amends Chapter 15, Section 11 of the Land Development Code, to read as follows:

Chapter 15 - SIGNS

Section 11: - Permanent signs.

[No change to subsections (a) and (b)]

(c) *Permanent sign types.* Permanent signs include the following types:

[No change to sub-subsections (1) through (10)]

(11) *Murals and art sculptures.* Murals and art sculptures are subject to the following standards:

(a) Murals may be located on a principal structure, accessory structure, fence or wall, or other structure on a lot, and shall not be subject to color regulations in this code except that reflective or fluorescent colors shall not be used.

(b) Art sculptures may be located on a lot outside of required buffers and yard setbacks.

(c) The minimum dimensional requirements and number of murals and art sculptures allowed for each district shall be as follows:

[no change to the remainder of the section]

SECTION 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 7. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 8. This Ordinance shall take effect immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney



STAFF REPORT

CASE NO. DCAM-26-0001

LDC TEXT AMENDMENT / CHAPTERS 2, 14, 15, and 16

REQUEST:	To amend Chapters 2, 14, 15, and 16 of the Land Development Code (LDC) regarding donation bins, temporary storage containers, and colors as part of an effort to update the LDC.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	Recommended Approval 5-0 (February 26, 2026)
CITY COUNCIL:	March 17, 2026

INTRODUCTION:

Staff has been updating the Code in phases over the past several years. Prior amendments included updates to sign regulations, the “green” building initiative, erosion control, updates to Building Code references, county-wide Traffic Impact Analysis standards, school concurrency, Construction Standards modifications, impact fees, site plan and subdivision regulations, removal of select uses from the Ridgewood Corridor zoning district, zero lot line homes in the R-2D zoning district, microbreweries, architecture requirements, economic development, Ridgewood targeted businesses, tree preservation, entertainment districts, home based businesses, docks and boathouses, and others.

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The proposed amendment defines donation bins and provides specific requirements that clarify allowed locations, size, appearance, number, and the operation of a donation bin, while maintaining the original intent of service area standards for building-related elements.

In developing the text amendment, City staff conducted a comprehensive review of donation bins on developed sites and other codes adopted by other local governments. This review considered site functionality, safety, and operations in addition to aesthetics and screening.

The proposed amendment would establish the following requirements within Chapter 16 of the Land Development Code (LDC) that must be met for the placement of donation bins within the City. These requirements are intended to address aesthetics, public safety, construction quality, and overall site functionality.

- Allowed locations: A donation bin may only be located on an approved developed and occupied non-residential site located within a commercial (NC, CC, HC, ICD, RD, PCD) or industrial (CI, LI) zoning district, or on the site of a non-profit organization or house of worship.
- Prohibited locations: A donation bin shall not be permitted on a site with a residential zoning district, a developed but unoccupied site or any site within the Port Orange Town Center Community Redevelopment Area. If a site becomes unoccupied due to business relocation or closure, the donation bin shall be removed.
- Location criteria: A donation bin shall be located on improved, level, paved surfaces that are part of a larger, developed, and occupied site. A donation bin shall not be placed in or block access to any code required parking spaces, access drives, loading or service area, or fire lane. A donation bin shall be securely anchored to prevent overturning or movement during severe weather and sited to provide adequate access and maneuverability for servicing vehicles without obstructing any access drives.
- Quantity: A parcel or lot that is less than five acres (5) in area shall be limited to one (1) donation bin and a parcel or lot that is five (5) acres or more in area shall be limited to two (2) donation bins.
- Parking and access drives: A donation bin shall not be placed in an access drive or block access to any access drive or parking space required by the LDC.
- Site design and safety: A donation bin shall be securely anchored to prevent overturning or movement during severe weather and must be located in a manner that provides adequate driveway access and maneuverability for service and loading vehicles.
- Orientation: The receiving door for a donation bin shall face the interior of the site and away from public rights-of-way and access drives.

- Size and appearance: A donation bin cannot exceed 35 square feet in area or 7 feet in height and must be painted in an earth-tone or pastel color as defined by the LDC.
- Setbacks: A donation bin shall not encroach in required landscaping or landscape buffer and shall be setback at least 100 feet from any residential use or zoning boundary, and 100 feet from an arterial right-of-way (Dunlawton Avenue, Nova Road, Clyde Morris Boulevard, Ridgewood Avenue, Taylor Road, Spruce Creek Road, and Williamson Boulevard).
- Use and maintenance: Donated items must be fully contained within a donation bin, with no outdoor display or on-site processing permitted. A donation bin shall be properly maintained to prevent nuisances such as odor, noise, rust, or graffiti, and all required signage must remain legible. Any overflowing or discarded items, trash, debris and other material or items in the area surrounding a donation bin must be removed immediately, with the permittee and property owner jointly responsible for maintaining the surrounding area free of debris.
- Liability: The permittee and property owner may be held individually and jointly liable for violations.
- Relocation: A donation bin shall not be relocated from a permitted location to a different location on a site or a new site without obtaining a new permit from the city.
- Signage: A donation bin shall not be used for off-site advertising of commercial activities. A donation bin shall provide all signage required by Florida Statutes § 496. In addition, a permittee may install a maximum of four (4) square feet of additional informational signage on no more than two sides of the donation bin.

The proposed amendment would establish specific regulations for the review and approval of donation bins within Chapter 16 of the Land Development Code (LDC). Under the proposed amendment, city approval would be required prior to the placement of any donation bin within the city. This approval would be issued through a city permit that authorizes the location, number, and appearance of a donation bin(s).

To obtain approval, any person or organization making the request to place a donation bin within the City would be required to submit the following for staff to review for compliance with the LDC.

- 1) A scaled site plan or drawing depicting the proposed location(s) of the donation bin(s);
- 2) A photograph or illustrative drawing of the proposed donation bin(s), including dimensions, color, signage, and any other information deemed necessary to evaluate the request; and
- 3) Written consent from the property owner to allow placement of the donation bin in the requested location.

Based on a review of existing donation bins on developed sites in Port Orange, the majority do not comply with the proposed amendment and would need to be removed. The following photographs illustrate donation bins within the city that do not comply with the proposed requirements due to color, quantity on a site, placement, location, and signage. If the text amendment is adopted, these bins would be required to be removed or relocated elsewhere on the property, subject to issuance of the appropriate permit.



Example of existing donations bins that do not comply with proposed requirements

If this amendment is approved, Code Enforcement has acknowledged that they will contact all property owners with a donation bin to notify them that either the property owner or the organization that owns the bin must apply for a permit. Donation bins for which a valid permit is issued may remain in place. Any donation bin for which a permit is not submitted or approved must be removed by the property owner or face Code Enforcement action.

CHAPTER 16 - MISCELLANEOUS REGULATIONS

The Land Development Code (LDC) currently regulates temporary storage containers (e.g., PODS) on residential properties in Chapter 16; however, the LDC does not address their use on non-residential properties. Temporary storage containers are commonly utilized in non-residential and residential construction and renovation projects to store furniture, inventory, equipment, tools, and building materials associated with interior remodels, tenant improvements, structural repairs, additions, and damage restoration.

Although permanent outdoor storage is permitted for certain commercial and industrial uses, those regulations apply to permanent outdoor storage areas that must be identified on an approved development plan and screened from public rights-of-way. As such, the LDC currently contains no specific standards for temporary storage containers on non-residential properties when associated with a construction and renovation project.

The proposed amendment would establish regulations for temporary storage containers on non-residential properties consistent with those applicable to residential properties.

Under the proposed language, temporary storage containers would be permitted only in association with improvements for which a building permit has been issued, or for other site improvements not requiring a development permit, subject to approval by the Administrative Official. The container would be permitted only for the duration of the active building permit and must be removed prior to the City's issuance of a Certificate of Occupancy, Certificate of Completion, or final inspection. *The Administrative Official may also approve temporary storage containers for unique circumstances that do not require a building permit or for time extensions when warranted.*

CHAPTER 2 - DEFINITIONS AND INTERPRETATIONS AND CHAPTER 14 ARCHITECTURAL DESIGN

The Land Development Code (LDC) currently requires that the color of structures other than single-family home, duplex, or manufacture home be limited to earth-tones or pastels, with other colors, excluding fluorescents, not exceeding twenty percent of any single elevation. The proposed amendment **does not change** the allowed colors for a non-residential structure; rather, it updates the method for determining whether a color qualifies as an earth tone or pastel to align with current paint industry standards.

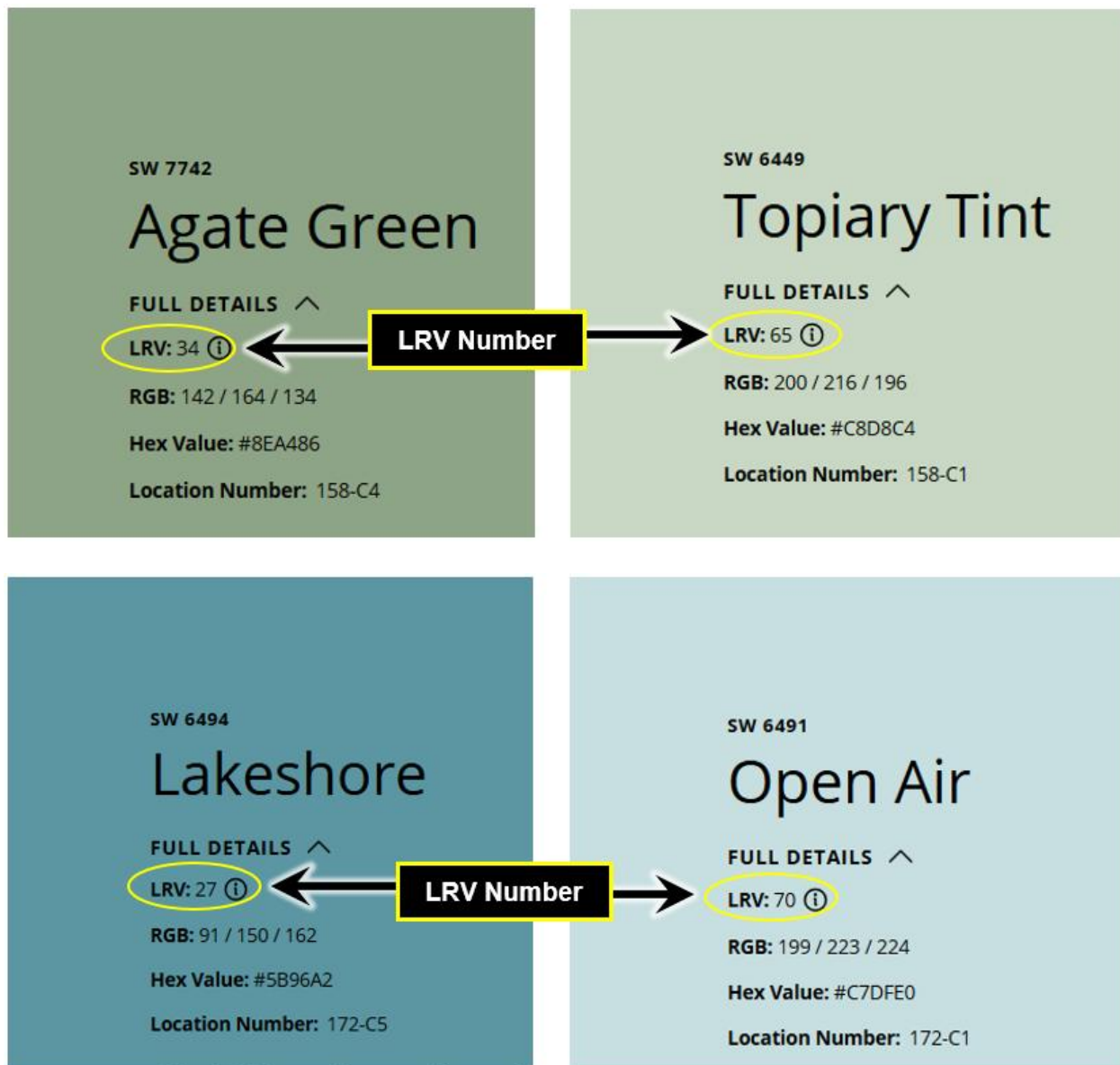
The current LDC defines colors based on the percentage of black or white in a given hue. However, this method is outdated, as modern paint colors are mixed from multiple bases and cannot be accurately measured by black or white content alone. Today, the paint industry uses Light Reflectance Value (LRV) as an objective and measurable standard for determining a color's lightness or darkness. This proposed amendment updates the LDC to align with current paint industry standards, ensuring a consistent and accurate method for determining whether a color qualifies as an earth tone or pastel.

Light reflectance value (LRV) is a measure of visible and usable light that is reflected from a surface when illuminated by a light source on a zero (0) [absolute black] to 100 [pure white] scale. The higher the LVR, the lighter and brighter the color. The lower the LVR the darker, more saturated the color. The LVR numeric scale is measurable and listed on all paint chips and samples. The proposed amendment establishes the LRV limits for an earth-tone color at a LRV of 25 or greater and a pastel color with light-toned colors with an LRV of 80 or greater and peaches, pinks, lavender, blues and greens with an LRV of 65 or greater.

In preparing this amendment, City staff consulted with employees at Home Depot, Lowe's, and Sherwin-Williams to confirm that LRV is the current standard used in their stores and to verify that it is the recognized method for measuring a color's lightness and brightness.

Below are paint sample cards from the Sherwin-Williams paint store illustrating two shades of green from the same fan deck strip (No. 158). A fan deck strip is a series of related paint colors grouped within a manufacturer's color system and displayed together on a single removable strip within a larger fan deck. These strips typically present variations of the same hue arranged from lighter to darker tones based on their Light Reflectance Value (LRV), which measures the amount of visible light a color reflects on a scale from 0 (black) to 100 (white).

For example, within Strip No. 158, *Agate Green* has an LRV of 34 and is classified as an earth tone, while *Topiary Tint* has an LRV of 65 and is classified as a pastel color. Although both colors are green and part of the same color family, the difference in LRV demonstrates a substantial variation in depth and brightness. Also, within Strip No. 172, *Lakeshore* has an LRV of 27 and is classified as an earth tone, while *Open Air* has an LRV of 70 and is classified as a pastel color. Although both colors are blue and part of the same color family, the difference in LRV demonstrates a substantial variation in depth and brightness.



Examples of paint sample cards from Sherwin-Williams showing the LRV for each color

CHAPTER 15 - SIGNS

The City's Land Development Code establishes color standards for non-residential buildings, generally requiring exterior colors to be earth tones or pastels. These standards ensure compatibility with other buildings and maintain a cohesive visual character. However, existing code does not specifically address murals and their unique role in public art and creativity. The code currently allows murals to be on a principal structure, accessory structure, fence or wall, or other structure on a commercial lot, but did not address allowed colors.

The proposed text amendment is to clarify that a mural shall not be subject to the color regulations otherwise required for buildings, with the exception that reflective or fluorescent colors shall not be used and allows murals to use colors beyond earth tones and pastels to encourage creativity and recognize murals as unique works of art. Reflective and fluorescent paints remain prohibited to maintain safety and visual appropriateness, while providing clear guidance for staff and property owners.

RECOMMENDATION

Approval to amend Chapters 2, 14, 15, and 16 of the Land Development Code as discussed in this staff report.



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. 2026-5: LDC TEXT AMENDMENT / CHAPTERS 2, 14 and 15 (Case No. DCAM-26-0001)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed Land Development Code amendments in this package are intended to enhance the existing Code as part of the City's ongoing maintenance efforts. The amendments address issues encountered in applying the Code, including regulations for measurement to determine paint color and paint requirements for murals.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

N/A

4. Additional information the governing body deems useful² (if any):

N/A

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/7/2026

SUBJECT: (H18) FY2025 Audit Discussion with James Moore & Company

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Presentation only - no motion needed.

SUMMARY: The City's audit firm, James Moore & Company, will discuss the status of the City's Annual Comprehensive Financial Report and Audit for the fiscal year ended September 30, 2025.

PRESENTER: Sue Wang

ATTACHMENTS:

Robin Fenwick
Sue Wang
Wayne Clark

Created/Initiated - 03/13/2026
Approved - 03/15/2026
Final Approval - 03/23/2026
