



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

SEPTEMBER 15, 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 - September 1, 2026
6. Bid Awards and Contract Items
 - a. Intent to Award ITB #26-04 Reclaimed Water Reservoir Improvement Project
 - b. Approval of Task Authorization No. 12 with Mead & Hunt, Inc. (RFSQ #21-03) for the Reclaimed Water Reservoir Improvements Construction Phase Services
 - c. Approval of Amendment No. 1 to Task Authorization No. 5 to Dredging & Marine Consultants, LLC for Day Dock at Riverwalk Park Bidding Assistance, Construction Management, and Inspection
 - d. Approval of Task Authorization No. 30 with Kimley-Horn & Associates, Inc. (RFSQ #21-03) for the Ponce Inlet Master Lift Station Rehabilitation
 - e. Approval of the Contract with Explosive Touch Enterprises LLC for the Annual July 4th Fireworks Show
 - f. Approval of the First Amendment to the Relocation and Reconstruction Agreement with Lamar Outdoor Advertising
7. Resolution No. 26-38 - Approval of Florida Department of Transportation (FDOT) Locally Funded Agreement and associated Three Party Escrow Agreement to

utilize Dewberry Engineering for plan update/post design services for the Dunlawton Avenue Turn Lanes Bundle Project (FDOT 449770-2-58/68) - Port Orange Project CD215

8. Resolution No. 26-42 - Approval of Grant Agreement (No. VOCA-C-2026-Port Orange Police Department-00109) from the Victims of Crime Act Grant Program to Assist Victims of Crime
9. Resolution No. 26-43 - Approval of Grant Agreement (No. L0527) with the Florida Department of Environmental Protection for the Charles Street Wastewater Lift Station Rehabilitation Project
10. Resolution No. 26-44 - Approval of Grant Agreement (No. L0528) with the Florida Department of Environmental Protection for the Portona Stormwater Ponds and Infrastructure Upgrades Project
11. Resolution No. 26-45 - Approval of Interfund Loans from Public Utilities to finance the acquisition of Fleet vehicles and equipment
12. Resolution No. 26-48 - Adopting the Stormwater Fee Assessment Roll and Approving the Stormwater Fee for Fiscal Year 2026-2027 with no increase from the prior year
13. Approval of ArtHaus Street Painting Festival Fee Waiver Request

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

D. COMMENTS AND ADDITIONAL ITEMS

14. Council Members
15. City Attorney
16. City Manager
 - a. Riverwalk Update
 - b. Stormwater Projects Update
 - c. Parks and Recreation Bond Projects Update

E. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

17. Citizen Advisory Committee for TPO
18. Environmental Advisory Board Update

F. PUBLIC HEARING

19. Second Reading - Ordinance No. 2026-9 - LDC Amendment Initiated by the Lamar Company L.L.C./Chapter 15 Billboards (DCAM-26-0002)
20. First Reading - Ordinance No. 2026-10 - MDA Amendment/Robinson PCD 5th Amendment (Case No. PRZA-26-0001)

G. REGULAR AGENDA

21. First Reading - Ordinance No. 2026-13 - Code of Ordinance Amendment/Article III – Special Events, Section 58-53 (Case No. DCAM-26-0004)

22. Appeal of ITB #26-06 for Cambridge Pump Station

H. COUNCIL COMMITTEE REPORTS

23. City Council Committee Reports

- a. First Step Shelter - Councilman Shawn Goepfert
- b. Port Orange/South Daytona Chamber of Commerce - Councilman Shawn Goepfert
- c. ArtHaus - Vice Mayor Tracy Grubbs
- d. General Employees' Pension Update - Mayor Scott Stiltner
- e. Round Table of Elected Officials - Mayor Scott Stiltner

I. ADJOURNMENT

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



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



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

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

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 1, 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

Mayor Scott Stiltner introduced Volusia County Councilman Danny Robins who provided an update, highlighting the Spruce Creek Phase One Basin Study and the Transform386 program, and expressed his appreciation for the City's hard work and dedication to Volusia County.

4. Public Comments on Consent Agenda Items Only

Robert Reinhausen, resident, commented on the biosolids items and is hopeful that the three workshops on biosolids will be open to the public.

CONSENT AGENDA

- 5. Approval of Minutes
 - a. Regular City Council Meeting - August 19, 2026
- 6. Bid Awards and Contract Items
 - a. Approval of Task Authorization No. 31 with Kimley-Horn for a Port Orange Regional Biosolids Evaluation Study in the amount of \$98,824.00
 - b. Approval of Memorandum of Understanding (MOU) with Volusia County for a Biosolids Facility Feasibility Analysis
 - c. Approval of Amendment and Renewal No. 1 to the Standard Contract for Services with Tetra Tech, Inc. for Disaster Debris Monitoring and Grant Consulting Services
- 7. Ratification of the Police Benevolent Association (PBA) Collective Bargaining Agreement for FY 2026-2027

8. Ratification of the International Union of Police Associations (IUPA) Collective Bargaining Agreement for FY 2026-2027

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

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Dan Morris, Port Orange South Daytona Chamber of Commerce Member and Port Orange Business Owner, provided an update on the Chamber and thanked Council for their continued support.

COMMENTS AND ADDITIONAL ITEMS

9. Council Members

Councilman Shawn Goepfert expressed his appreciation to City staff for educating the Council Members on the union contracts approved on the Consent Agenda tonight.

Vice Mayor Tracy Grubbs highlighted the recent Spouses Backing the Blue Golf Tournament and noted that on September 12 the Port Orange Library will host a How-To event featuring bicycle helmet fittings for children. He also mentioned that Port Orange Family Days, an event organized by the Port Orange Community Trust rather than the City, was canceled. In response, Arthaus proposed hosting a Fall Family Arts Festival. This will be a smaller-scale event taking place October 17–18. Vendors are encouraged to sign up early.

Mayor Scott Stiltner commented on the chalk art that occurs during the festival, noting the talent, community involvement, and enjoyment.

10. City Attorney

There was nothing further.

11. City Manager

a. Biosolids Update

Wayne Clark, City Manager, introduced Steve Parnell, Public Utilities Director, and Mike Ulrich, Volusia County Water Resource Utilities Director.

Mr. Parnell and Mr. Ulrich provided a history of the biosolids project that was approved on the Consent Agenda tonight, how it originated, provided details, and answered Council Members' questions.

Council Members stated the City is always looking for ways to improve, and looking ahead long term for ways to save money. They expressed their appreciation to Mr. Parnell and Mr. Ulrich for showing the plan and to all staff involved for their proactive efforts by thinking ahead.

- b. Riverwalk Update
- c. Stormwater Projects Update
- d. Parks and Recreation Bond Projects Update

Mr. Clark provided an update on the above items to include the City Center Sports Complex and Willow Run Park.

Mayor Scott Stiltner expressed his appreciation to Mr. Clark and the City's Staff for being the first to sign up for the next round of the Transform386 program.

PUBLIC HEARING

12. First Reading - Ordinance No. 2026-9 - LDC Amendment Initiated by the Lamar Company L.L.C./Chapter 15 Billboards (DCAM-26-0002)

Matt Jones, City Attorney, read Ordinance No. 2026-9.

ORDINANCE NO. 2026-9

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 15 RELATING TO NONCONFORMING SIGNS TO CLARIFY THE EXISTING STANDARDS FOR HEIGHT AND DIGITAL SIGN FACE AREA FOR PROPOSED DIGITAL SIGN FACE REPLACEMENTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2026-9
was made by Vice Mayor Tracy Grubbs
and Seconded by Councilman Shawn
Goepfert.

Tim Burman, Community Development Director, introduced the item, provided details, and answered Council Members' questions.

Rob Merrell, Attorney for the applicant, provided further details and answered Council Members' questions relating to the size and height required for the signage.

Brad Miller, Lamar Advertising, provided further details regarding the sign height requirements related to safety standards. He explained that the sign is serviced from the front and rear. The height is needed so that if the individual servicing the sign was to fall, the lanyard would absorb the energy and prevent the individual from contacting the

Angela LeDuc, resident, expressed her opposition to the item.

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

REGULAR AGENDA

13. Appeal of ITB #26-06 for Cambridge Pump Station

Mayor Scott Stiltner advised this item is being continued until September 15.

COUNCIL COMMITTEE REPORTS

14. City Council Committee Reports

a. Volusia Flagler TPO - Vice Mayor Tracy Grubbs

Vice Mayor Tracy Grubbs provided an update on the Volusia Flagler TPO, highlighting funding and the Williamson corridor.

Councilman Shawn Goepfert provided an update from the Economic Development Committee meeting regarding road development and funding. He noted that municipalities must request interchanges or on/off ramps needed, from FDOT, as FDOT will not initiate the request.

Mayor Scott Stiltner stated that this is the primary reason for the City's representation on the committee. He noted that the committee reviews the projects annually, including the impact of rising costs, which have increased significantly. He further commented that our representative on the committee provides a report to Council every month, and that is a great time for Council to ask questions or express any concerns to bring back to the committee.

Mr. Clark advised that the TPO Committee develops a TPO list, which Council approves annually.

ADJOURNMENT - 7:18 p.m.

Mayor Scott Stiltner

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6a) Intent to Award ITB #26-04 Reclaimed Water Reservoir Improvement Project

DEPARTMENT: Engineering

RECOMMENDED MOTION: Move to award ITB #26-04, Reclaimed Water Reservoir Improvement Project to J.D. Weber Construction Company in an amount not to exceed \$2,350,772.87; authorize contingency for unforeseen conditions in an amount not to exceed \$100,000; and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: Engineering Staff requests City Council approval to award ITB #26-04, Reclaimed Water Reservoir Improvements, to J.D. Weber Construction Company in the amount of \$2,350,772.87, and authorize contingency for unforeseen conditions in an amount not to exceed \$100,000.

The Florida Department of Environmental Protection (FDEP) operating permit for the Water Reclamation Facility limits the amount of discharge allowed to the adjacent wetland from the reclaimed water reservoir system. In late 2021, the City exceeded the permitted discharge limit. This led to FDEP issuing a consent order requiring the City to address this matter. The City retained Mead & Hunt to evaluate the effluent disposal system to identify the cause of the excessive discharge and develop a solution. Several alternatives were considered, including construction of a new reservoir and expansion of existing storage facilities. After evaluating the options, the City selected the most cost-effective solution: increasing the storage capacity of the existing reclaimed water reservoirs by raising the reservoir berms and overflow elevations. These improvements will provide additional wet-weather storage and reduce the likelihood of exceeding the permitted discharge limit in the future.

During the preliminary design process, City Operations Staff identified a recurring maintenance issue associated with the existing pipe connection between Reservoir A and Reservoir B. The pipe frequently becomes obstructed by debris associated with alligator nesting activity, preventing water from flowing between the reservoirs as intended. When the connection becomes blocked, water levels in Reservoir B approach the overflow elevation, reducing operational flexibility and requiring Staff intervention to restore normal operations. To improve system reliability and operational efficiency, the project scope was expanded to include removal of the existing interconnecting pipe and construction of an open-channel connector between the reservoirs.

Project Description

The project will enhance the City's reclaimed water storage and distribution system through several improvements, including:

- Construction of an open-channel connection between Reservoir A and Reservoir B to replace the existing interconnecting pipe.
- Raising the Reservoir B berm approximately one foot to increase reclaimed water storage capacity by approximately 15 million gallons.
- Improvements to reclaimed water pump station yard piping.
- Upgrades to electrical systems and controls to improve operational flexibility and reliability.

Upon completion, the project will increase reclaimed water storage capacity, improve system performance, enhance operational reliability, and satisfy the corrective actions necessary to address FDEP requirements.

On June 24, 2026, six sealed bids were received. J.D. Weber Construction Company was determined to be the lowest responsive and responsible bidder. The project is included in the approved Capital Improvement Program (CIP) budget. Following is a breakdown of the six bids received.

J.D. Weber Construction Company	\$2,350,772.87
All State Civil Construction, Inc.	\$2,722,571.44
C&B Civil Construction, Inc.	\$2,987,330.00
Masci General Contractors, Inc.	\$3,179,172.65
Prime Construction Group, Inc.	\$3,298,645.00
GPS Civil Construction, Inc.	\$3,444,375.00



Reclaimed Water Reservoir Improvements



Reclaimed Water Reservoir Improvements



PRESENTER: Junos Reed

ATTACHMENTS:

1.	Water Reclaimed Lakes - EJCDC Agreement - J.D. Weber	Water Reclaimed Lakes - EJCDC Agreement - J.D. Weber.pdf
2.	Addendum No. 1	Addendum No. 1.pdf
3.	Addendum No. 2	Addendum No. 2.pdf
4.	Addendum No. 3 - Final	Addendum No. 3 - Final.pdf
5.	Addendum 4 -Final	Addendum 4 -Final.pdf
6.	Addendum No. 5 Final	Addendum No. 5 Final.pdf
7.	Notice of Intent to Award	Notice of Intent to Award.pdf
8.	ITB #26-04-CW Solicitation Document	ITB #26-04-CW Solicitation Document.pdf
9.	ITB #26-04-CW_(Attachment 1)_Schedule of Unit Pricing	ITB #26-04-CW_(Attachment 1)_Schedule of Unit Pricing.xlsx
10.	ITB #26-04-CW_2018 General Conditions	ITB #26-04-CW_2018 General Conditions.pdf
11.	ITB 26-04-CW - Complete Bid Documents - JD Weber	ITB 26-04-CW - Complete Bid Documents - JD Weber.pdf
12.	ITB 26-04-CW Recommendation of Award and Bid Tabulation_FINAL	ITB 26-04-CW Recommendation of Award and Bid Tabulation_FINAL.pdf
13.	Port Orange - Affidavit HT	Port Orange - Affidavit HT.pdf
14.	Port Orange - Affidavit WC	Port Orange - Affidavit WC.pdf
15.	COI - City of Port Orange	COI - City of Port Orange.pdf

Julia Wiggins
Richard Colby
Junos Reed
Sue Wang
Matthew Jones
Wayne Clark

Created/Initiated - 08/19/2026
Approved - 08/21/2026
Approved - 08/25/2026
Approved - 08/25/2026
Approved - 09/08/2026
Final Approval - 09/08/2026

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 **J.D. Weber Construction Co., 150 Business Center Drive, Ormond Beach, Florida 32174** ("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:

Furnish all labor, equipment and materials for construction of a ditch to connect Lake "A" to Lake "B" in lieu of the existing interconnecting piping; raising the berm height of Lake B by one foot; and modifying its three emergency overflow weirs to provide additional storage; improving the yard piping as shown in the plans to enhance operational flexibility; and implementing electrical upgrades to the intake pump station and the effluent station as shown in the plans.

ARTICLE 2—THE PROJECT

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

Reclaimed Water Reservoir Improvement Project / ITB #26-04-CW – Lake A and Lake B improvements generally located South of Shunz Road and East of Interstate 4 in Port Orange, Volusia County, Florida.

ARTICLE 3—ENGINEER

- 3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, Bradley T. Blais, **P.E.** ("Engineer") **of Mead & Hunt**, and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*

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

- 4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

- A. The Work will be substantially complete within Three hundred ninety-five **(395)** days from receipt of Notice to Proceed from the City is when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. *Substantial Completion*: Contractor shall pay Owner \$0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 - 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$0.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Deleted in its entirety.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

- A. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
 - A. Deleted in its entirety.
 - B. For all Unit Price Work in accordance with Paragraph 13.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
See Exhibit No. 1 Contractor's Bid Schedule.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$2,350,772.87

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 11, inclusive).
2. Bonds:
 - a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages 1 to 286, not attached, on file with the office of the City Clerk).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages 1 to 37, Not attached, on file with the office of the City Clerk).
7. Addendum No. 1 (pages 1 to 1, inclusive).
8. Addendum No. 2 (pages 1 to 1, inclusive).
9. Addendum No. 3 (pages 1 to 11, inclusive).
10. Addendum No. 4 (pages 1 to 2, inclusive).
11. Addendum No. 5 (pages 1 to 3, inclusive).
12. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (pages 1 to 2, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages 1 to 40, inclusive).
 - c. Exhibit No. 3 City's ITB 26-04 (pages 1 to 71, not attached, on file with office of the City Clerk).
13. 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.

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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 *Diversity, Equity, and Inclusion (DEI)*

Pursuant to Section 287.139, Florida Statutes, Contractor certifies that it does not and will not use City funds provided under this Agreement to require its employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed using materials relating to diversity, equity, and inclusion as defined in Section 166.04971, Florida Statutes. Contractor acknowledges that this certification is a material representation upon which the City has relied in entering into this Agreement. Contractor shall immediately notify the City in writing if it becomes unable to comply with this certification during the term of the Agreement. Failure to comply with this provision shall constitute a material breach of this Agreement and may result in termination for cause, withholding of payment, or any other remedy available to the City under this Agreement or applicable law.

9.12 *E-Verify.*

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

9.13 *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.

[Remainder of this page intentionally left blank]

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

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

Contractor:

J.D. Weber Construction Co.

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Joseph D. Weber

(typed or printed)

Title:

President

(typed or printed)

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

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

150 Business Center Drive

Ormond Beach, Florida 32174

Phone:

(386) 671-2727

Email:

joejr@jdweberconstruction.com

License No.:

CUC1224075

State:

Florida

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Scott Stiltner

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

Robin L. Fenwick, MMC

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

EJCDC – Agreement Additions and Deletion Report

Consisting of 11 Pages

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 **J.D. Weber Construction Co., 150 Business Center Drive, Ormond Beach, Florida 32174** ("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:

Furnish all labor, equipment and materials for construction of a ditch to connect Lake "A" to Lake "B" in lieu of the existing interconnecting piping; raising the berm height of Lake B by one foot; and modifying its three emergency overflow weirs to provide additional storage; improving the yard piping as shown in the plans to enhance operational flexibility; and implementing electrical upgrades to the intake pump station and the effluent station as shown in the plans.

ARTICLE 2—THE PROJECT

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

Reclaimed Water Reservoir Improvement Project / ITB #26-04-CW – Lake A and Lake B improvements generally located South of Shunz Road and East of Interstate 4 in Port Orange, Volusia County, Florida.

ARTICLE 3—ENGINEER

- 3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, Bradley T. Blais, _____ P.E. ("Engineer") of Mead & Hunt, _____ and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within Three hundred ninety-five (395)_____ days from receipt of Notice to Proceed from the City is after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

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

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

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

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

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

A. Deleted in its entirety.

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

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
See Exhibit No. 1 Contractor's Bid Schedule.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					<u>\$2,350,772.87</u>

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 or 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 11, inclusive).
2. Bonds:
 - a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages 1 to 286, ~~inclusive~~not attached, on file with the office of the City Clerk).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages 1 to 37, ~~inclusive~~Not attached, on file with the office of the City Clerk).
7. Addendum No. 1 (pages 1 to 1, inclusive).
8. Addendum No. 2 (pages 1 to 1, inclusive).
9. Addendum No. 3 (pages 1 to 11, inclusive).
10. Addendum No. 4 (pages 1 to 2, inclusive).
11. Addendum No. 5 (pages 1 to 3, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (pages 1 to 2, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages 1 to 40, inclusive).
 - c. Exhibit No. 3 City's ITB 26-04 (pages 1 to 71, inclusive, not attached, on file with the office of the City Clerk).

10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and

procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

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 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
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9.13 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.

[Remainder of this page intentionally left blank]

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

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

Contractor:

J.D. Weber Construction Co.

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Joseph D. Weber

(typed or printed)

Title: President

(typed or printed)

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

Attest: _____

(individual's signature)

Title: _____

(typed or printed)

Address for giving notices:

150 Business Center Drive

Ormond Beach, Florida 32174

Phone: (386) 671-2727

Email: joejr@jdweberconstruction.com

License No.: CUC1224075

State: Florida

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Scott Stiltner

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

Robin L. Fenwick, MMC

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

Payment and Performance Bond

For Completion and Return to City for Recording

Consisting of 4 Pages (with Power of Attorney)

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: J.D. Weber Construction Co.
Principal Business Address: 150 Business Center Drive
Ormond Beach, Florida 32174
Contact Person: Joseph D. Weber, President
Phone Number: (386) 671-2727

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: \$2,350,772.87 **City Case/Project No.** ITB 26-04 Reclaimed Water Reservoir Improvements

Description of Work: Construction of ditch connecting Lake "A" to Lake "B" with modifications to berm height and overflow weirs, improve piping and implement electrical upgrades to intake and effluent pump stations.

Project Location: Generally located South of Shunz Road and East of Interstate 4 in Port Orange, Volusia County, Florida.

Legal Description: A portion of Parcel No. 622000000020 and 622000000010

Front Page

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

J.D. Webster Construction Co.

ITB 26-04 Reclaimed Water Reservoir Improvements

Bond No. _____

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

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

BY THIS BOND, We, **J.D. WEBER CONSTRUCTION CO.** 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 **TWO MILLION THREE HUNDRED FIFTY THOUSAND SEVEN HUNDRED SEVENTY-TWO AND 87/100 DOLLARS (\$2,350,772.87)**, 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 _____, 2026, entered into by and between the Principal and the City, for Reclaimed Water Reservoir Improvements, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond shall be deemed an original, this _____, day of _____, 2026.

Attest:

J.D. WEBER CONSTRUCTION CO.
(Name of Principal)

(As to Corporate Principal) Secretary

By: _____
Joe D. Weber, 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

Consisting of 74 Pages

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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.”
34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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

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

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

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

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

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- 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 the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

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

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

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
5. If Contractor submits a schedule indicating an intention to achieve completion of the 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

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- 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. Abnormal weather conditions not anticipated or customary in Volusia County;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:
 - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. Deleted in its entirety.
 - 3. Adjustments of Contract Times are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. Deleted in its entirety.

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

- 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 stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety.
- F. Failure of Owner to demand such certificates or other evidence of the Contractor’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.

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. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

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

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 Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.01 Contractor’s Means and Methods of Construction

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

7.02 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner’s written rules and regulations regarding jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

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 fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .
- B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.
- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

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.

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 ENTIRETY

12.01 *Claims* - Deleted in its entirety.

- A. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
 - 4. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
- E. Deleted in its entirety.
- F. Deleted in its entirety.
- G. Deleted in its entirety.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

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surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants,

purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

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

- I. 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 General Conditions
Additions and Deletions Version

Consisting of 87 pages

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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~~GUIDELINES FOR USE OF EJCDC® C-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT~~

~~1.0 — PURPOSE AND INTENDED USE OF THE DOCUMENT~~

~~EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.~~

~~2.0 — OTHER DOCUMENTS~~

~~EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.~~

~~These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost Plus Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.~~

~~To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).~~

~~The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).~~

~~3.0 — ORGANIZATION OF INFORMATION~~

~~All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.~~

~~If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.~~

~~4.0 — EDITING THIS DOCUMENT~~

~~Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.~~

~~Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the~~

user must comply with the terms of the License Agreement, Paragraph 4.0, Document Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term “Standard EJCDC Text” for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.
2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any “Track Changes,” redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at www.ejcdc.org and the websites of EJCDC’s sponsoring organizations.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

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.”
343. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be ~~occupied and/or~~ utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work. ~~Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner to begin to utilize the entire Project for the purposes for which it was intended.~~
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- 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.
 - 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.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 50. *Emergency Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- 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. Evidence of Owner's Insurance: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~

2.02 Copies of Documents

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion and Final Completion dates;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, ~~or~~ Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.
1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a day 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 carefully studying and comparing careful review of the Contract Documents and checking and verifying including pertinent figures therein and all applicable field measurements and dimensions therein.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed* ~~*(Old 2.03)*~~

- A. The Contract Times ~~will~~shall not commence to run and Contractor shall not commence on the 30th day after the Effective Date of the Contract or, if the Work until Owner issues a Notice to

~~Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given issued by Owner at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in ~~Contract Price or~~ Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption,

and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions not anticipated or customary in Volusia County;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times ~~or Contract Price~~ is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Deleted in its entirety. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times ~~or Contract Price~~ are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times ~~or Contract Price~~ must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. ~~Deleted in its entirety. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

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

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 Availability of Lands ~~(Old 4.01)~~

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. ~~Deleted in its entirety. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 Use of Site and Other Areas ~~(Old 6.11)~~

- A. *Limitation on Use of Site and Other Areas*
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such

damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell tower floorpads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

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

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

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. 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.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- J. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- K. Deleted in its entirety.~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a payment and performance bond ~~and a payment bond in accordance with Sec. 255.05, Florida Statutes, each~~ in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, ~~except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury.~~ A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in ~~the state or jurisdiction in which the Project is located~~ Florida, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. Prior to the date of commencement as set forth in the Notice to Proceed, ~~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. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.
- B. All insurance required by the Contract to be purchased and maintained by ~~Owner or~~ Contractor shall be obtained from insurance companies that are duly licensed or authorized in the ~~s~~State or jurisdiction in which the Project is located of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety. ~~Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~
- F. Failure of Owner ~~or Contractor~~ to demand such certificates or other evidence of the ~~Contractor~~other party’s full compliance with these insurance requirements, or failure of Owner ~~or Contractor~~ to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the ~~other party~~Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability

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policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

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

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

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

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

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

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

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

6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; ~~and~~
 5. include completed operations coverage:
 - a. Such insurance shall remain in effect for 10 years after Substantial Completion.
 - b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.
 6. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and

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

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: ~~Owner-Contractor~~ is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, ~~Contractor~~Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of ~~Owner's-Contractor's~~ procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner ~~(directly, if it is the purchaser of the builder's risk policy, or through Contractor)~~ will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or

damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or Contractor~~ as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. ~~Deleted in its entirety. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~
1. ~~Deleted in its entirety. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~
- C. ~~Deleted in its entirety. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

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~~ 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 Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

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

of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding the 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 sanitaiysanitary 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. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~
- C. ~~Deleted in its entirety. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a

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 fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner ~~and Engineer~~, and the Owner's officers, directors, members, partners, and employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. ~~In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity~~

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 ~~*Evidence of Financial Arrangements*~~

- A. ~~Deleted in its entirety. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).~~ N/A

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

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 ~~ordered or~~ documented by an [Emergency](#) Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the [Emergency](#) Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a written Emergency Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit ~~any Claim seeking such a~~ Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

- 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.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting

data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and ~~Action Recommendation~~ on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either ~~recommend~~ approve ~~approval of~~ the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision:* Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon ~~Owner and~~ Contractor, unless ~~Owner or~~ Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety

- A. Deleted in its entirety. ~~Claims Process:~~ The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Deleted in its entirety. ~~Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~
 2. Deleted in its entirety. ~~Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

3. Deleted in its entirety. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Deleted in its entirety. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. Deleted in its entirety. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. Deleted in its entirety. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. Deleted in its entirety. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 2. Deleted in its entirety. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. Deleted in its entirety. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. Deleted in its entirety. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Deleted in its entirety. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal

~~of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.~~

- G. ~~Deleted in its entirety.~~ *Final and Binding Results:* ~~If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.~~

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts

will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors, ~~attorneys, and accountants~~) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence, **recklessness, or intentional misconduct** of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 6. Expenses incurred in preparing and advancing Claims.
 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are ~~not guaranteed estimates~~ and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price ~~shall be guaranteed and~~ will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK~~**OLD ARTICLE 13**~~

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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. ~~At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month),~~ Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor ~~within 10 days after the date on the Application for Payment is stamped as received by Engineer~~ indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor ~~shall~~may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

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. ~~Ten days a~~ Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer will become due, and when due will be paid by Owner to Contractor.

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the

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 ~~P~~punch ~~L~~Ist items to be completed or corrected before final payment. Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner is able to begin to utilize the entire ProjectWork for the purposes for which it was intended.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion subject to Certificate of Occupancy (or Completion). Engineer shall attach to the certificate a ~~p~~Punch ~~L~~Ist 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 ~~P~~punch ~~L~~Ist. 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 ~~p~~Punch ~~L~~Ist 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 ~~P~~Punch ~~L~~List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ~~P~~Punch ~~L~~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 ~~P~~Punch ~~L~~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; ~~insurance;~~
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and ~~of~~ Liens filed in connection with the Work.
3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) ~~the releases and receipts include all payrolls~~ labor, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor ~~a Lien could be filed~~; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. ~~If any~~

Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25)30 days of the final Application for Payment being stamped as received by Owner's receipt of the final Application for Payment from Engineer.

15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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; ~~or~~
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer; ~~or~~
 - 5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or
 - 6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10-5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7-5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. ~~Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order.~~ When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon ~~7-5~~ days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract

and recover from Owner payment on the same terms as provided in Paragraph 16.03. Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Deleted in its entirety. ~~Methods and Procedures~~

- A. Deleted in its entirety. ~~Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:~~

1. Deleted in its entirety. ~~A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~
2. Deleted in its entirety. ~~Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

- B. Deleted in its entirety. ~~Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:~~

1. Deleted in its entirety. ~~elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~
2. Deleted in its entirety. ~~agree with the other party to submit the dispute to another dispute resolution process; or~~
3. Deleted in its entirety. ~~if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-

suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.
3. Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event after the expiration of the applicable statute of limitations.
4. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.
5. Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.
6. In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

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 ~~Sstate of Florida~~ State of Florida ~~in which the Project is located.~~

18.08 *Assignment of Contract*

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

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 Technical Specifications

Not attached, on file with Junos Reed, City Engineer

Consisting of 286 Pages

Bid Set Drawings

Not attached, on file with Junos Reed, City Engineer

Consisting of 37 Pages

EJCDC Addendum No. 1 Dated May 29, 2026

Consisting of 1 Page



CITY OF PORT ORANGE

PURCHASING DIVISION
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PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
cwilson@port-orange.org
purchdiv@port-orange.org

ADDENDUM NO. # 1

May 29, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS:

None

C. QUESTIONS AND ANSWERS:

Question No. 1 Do you have the City's budget for this project? Or the engineer's estimate?

Response: **Estimated Cost is \$2,750.00.**

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 1

Catrina Wilson
Procurement Manager
cwilson@port-orange.org

EJCDC Addendum No. 2 Dated June 1, 2026

Consisting of 1 Page



CITY OF PORT ORANGE

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ADDENDUM NO. # 2

June 1, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATION:

Correction to Addendum No. 1. The estimated dollar amount for this project is \$2,750,000.00 and not \$2,750.00.

C. QUESTIONS AND ANSWERS:

None

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 2

Catrina Wilson
Procurement Manager
cwilson@port-orange.org

EJCDC Addendum No. 3 Dated June 17, 2026

Consisting of 11 Pages



CITY OF PORT ORANGE

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ADDENDUM NO. # 3 **June 17, 2026**

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATION:

Revised Attachment No. 1 – “Schedule of Unit Pricing” is hereby attached to this Addendum No. 3.

C. QUESTIONS AND ANSWERS:

Question No. 1 Is this project subject to state bill SB 674, which went into effect on July 1, 2024?

Response: **This project is not subject to Florida Senate Bill 674**

Question No. 2 Is this project subject to BABAA, AIS or any other federal requirement for domestically made products?

Response: **This project is not subject to BABAA, AIS or any other federal requirements.**

Question No. 3 If domestic materials will be needed, what materials will fall under this requirement?

Response: This project is not subject to domestic materials requirements.

Question No. 4. If State of Florida or Federal funds are being used, where are those funds coming from?

Response: This project is fully funded by the City of Port Orange. No State or Federal funds are being used.

Question No. 5 On Plan Page C-109, Materials Note D, it states "Where groundwater conditions require provision for relief of hydrostatic uplift, 7/8" (22MM) I.D weep tube assemblies shall be inserted through the fabric". It later states "The weep tube assemblies shall be located as called for on the plans" however there is no clear detail or mention of weep tube locations/spacing within the Fabriform being called for on that page.

Question No. 5(a) Can you provide clarification on the location of the weep tube assemblies, or if they are required throughout the entire installation of the Fabriform.

Response: Weep tube assemblies are not required for this project.

Question No. 5(b) Can you provide the required spacing placements of said weep tube assemblies?

Response: Weep tube assemblies are not required for this project.

Question No. 6 We are finding quantities not matching and the elliptical size doesn't match the drawings with the bid tab. Do we bid according the bid tab, or does the engineer need to look at.

Response: For bid item 14B, the correct pipe size is 14 x 23 ERCP. Use the estimated quantity of 175 LF listed on the bid form

Question No. 7 During our review of the contract documents for the above-referenced project, Prime Construction Group, Inc. identified a potential alternative means of accomplishing part of the embankment raise scope. We respectfully request written clarification as to whether dredging material from the existing reservoir/lake areas has been evaluated or may be considered for use in construction of the proposed berm raise, subject to material suitability and compliance with the contract documents.

Response For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated

material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 8 Section 011100 – Summary of Work states that the work includes raising the berm height of Lake B by one foot, modifying the emergency overflow weirs, improving yard piping, and implementing electrical upgrades. That section also states that the Contractor is to furnish all labor, equipment, tools, services, and incidentals to complete all work required by the specifications and drawings.

Section 312300 – Excavation and Fill states that fill for the embankment crest raise is located on Schunz Road, approximately three miles northeast of the project, and further states that a stockpile of soil from the original construction of the lake is available within 2.5 miles of the project along Shunz Road, with screening and separation of usable and unsuitable soils required.

That same section states that embankment and backfill materials must consist of SP, SM, SP-SM, SC, and SC-SM materials, and that soils containing deleterious or unsuitable materials will not be acceptable.

Because the current contract documents identify off-site and stockpiled material sources and define material suitability criteria for embankment construction, but do not expressly state whether dredged material from the existing lake/reservoir system may or may not be used, bidders would benefit from written clarification on whether such an approach is permissible, has been considered by the City/Engineer, or would require formal approval through addendum or substitution review.

In addition, Section 312300 states that all work will be performed without the lakes being drawn down, which may affect the feasibility, sequencing, and means and methods of any dredging-related approach.

Prime Construction Group respectfully requests written clarification on the following:

Question No. 7(a) Has the City and/or Engineer evaluated dredging of the existing lake/reservoir areas as a potential means of obtaining material for the proposed berm raise?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for

use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(b) Would the City permit bidders to propose the use of dredged on-site material for embankment construction, provided the material meets the suitability requirements of Section 312300 – Excavation and Fill?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(c) If the use of dredged on-site material is acceptable, should bidders include such work within the existing bid items, or does the City intend to issue an addendum identifying how such work would be measured and paid?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(d) If dredging is not acceptable or not contemplated for this project, please confirm that bidders are to base pricing only on the material sources and embankment construction approach expressly identified in the contract documents.

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road.

Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(e) If the City would consider dredging as an alternative approach, would additional geotechnical/material testing, permitting, or design review be required beyond the testing and submittals already identified in Section 312300 – Excavation and Fill?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 8 During our review of the bid documents for the above-referenced project, Prime Construction Group has identified a significant discrepancy between Attachment 1 – Schedule of Unit Pricing (XLSX bid form) and Specification Section 012000 – Price and Payment Procedures. We respectfully request written clarification from the City prior to the bid submission deadline.

Section 012000 defines twenty-four (24) separate bid items with individual measurement and payment criteria. However, Attachment 1 – Schedule of Unit Pricing contains only thirteen (13) priced line items plus five (5) Owner-defined allowances, for a total of eighteen (18) entries. The following eleven (11) bid items are defined in Section 012000 but do not appear on the Attachment 1 bid form:

- Bid Item 4 – Clearing and Grubbing (Unit)
- Bid Item 7 – Channel Construction (Lump Sum)
- Bid Item 8 – Spillway Removal and Reconstruction (Lump Sum)
- Bid Item 9 – Yard Piping (Lump Sum)
- Bid Item 10 – Flow Meter (Each)
- Bid Item 11 – Gate Valves (Each)
- Bid Item 12 – Winged Concrete Endwall (Each)
- Bid Item 13 – Type E Ditch Bottom Inlet (Each)
- Bid Item 15 – FDOT 530 RipRap (Ton)
- Bid Item 16 – Weir Modification (Lump Sum)
- Bid Item 18 – Materials Testing (Lump Sum)

Several of these missing items represent major scope elements of the Work, including Channel Construction (Bid Item 7), Spillway Removal and Reconstruction (Bid Item 8), Yard Piping (Bid Item 9), and Weir Modification (Bid Item 16). Without separate line items on the bid form,

bidders cannot provide individual unit or lump-sum pricing for these scopes as contemplated by Section 012000.

Additionally, Section 012000 §1.1.C states that work for which no separate Contract Item is provided shall be considered incidental. If the City intends for these eleven items to be priced separately, the current bid form does not accommodate that intent. Conversely, if the City intends for these scopes to be incidental to other bid items, the measurement and payment language in Section 012000 creates a conflict.

Prime Construction Group respectfully requests written clarification on the following:

Question No. 8(a) Will the City issue a revised Attachment 1 – Schedule of Unit Pricing that includes all twenty-four (24) bid items defined in Section 012000?

Response: City staff have reviewed the bid form and do not concur that all items identified in the Measurement and Payment section are reflected in Attachment 1, Schedule of Unit Pricing. During this review, one discrepancy was identified: Bid Item 24 was incorrectly shown as a duplicate of Bid Item 17. A revised Attachment 1 – Schedule of Unit Pricing has been issued with this addendum to correct this error. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(b) If a revised bid form will not be issued, should bidders treat the eleven (11) items listed above as incidental to other bid items, and if so, which bid items should absorb each scope?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(c) If the eleven (11) items are to be treated as incidental, will the City amend Section 012000 to remove the separate measurement and payment criteria for those items to eliminate the conflict?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(b) Does the City intend to issue an addendum addressing this discrepancy prior to the bid submission deadline?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 9 During our review of the contract documents for the above-referenced project, Prime Construction Group, Inc. identified a discrepancy regarding

which party is responsible for engaging the independent construction/materials testing firm and bearing the related testing costs. We respectfully request written clarification from the City so bidders can properly assign responsibility and pricing for required testing work.

Section 312300 – Excavation and Fill, Paragraph 3.16, states that “The Contractor shall coordinate with the Owner who will engage the services of an established independent construction and materials testing firm” to perform testing identified in that section. That same section then lists specific testing types and testing frequencies for embankment fill, trench backfill, and general backfill.

However, Section 01 45 29 – Testing Laboratory Services, Paragraph 1.1.A.1, states that the Contractor will employ and pay for services of an independent testing laboratory to perform testing specifically indicated in the contract documents or specifications.

In addition, Section 01 45 29 – Testing Laboratory Services, Paragraph 1.6.B, states that all laboratory and field tests will be paid for by the Contractor, and that the Contractor shall furnish all necessary labor, equipment, and materials for such tests, except for the Engineer’s expenses.

Further, Section 012000 – Price and Payment Procedures, Bid Item 18 – Materials Testing, states that lump sum payment will be made for all labor, equipment, and materials provided to complete all materials testing requirements per the contract documents.

Because Section 312300 states that the Owner will engage the testing firm, while Section 01 45 29 states that the Contractor will employ and pay the testing laboratory, the specifications currently provide conflicting direction regarding responsibility for procurement and payment of the testing services.

This conflict directly affects bidder pricing for Bid Item 18 – Materials Testing, as well as pricing strategy for earthwork, trench backfill, and embankment operations that rely on required testing frequencies identified in Section 312300.

Section 312300 identifies the following testing requirements/frequencies:

- Embankment Fill:
 - Proctor and Grain Size Analyses — one test per 3,000 CY
 - Density Test — one test per 300 LF/lift

- Trench Backfill:
 - Proctor and Grain Size Analyses — one test per 300 CY
 - Density Test — one test per 200 LF/lift
- General Backfill:
 - Proctor and Grain Size Analyses — one test per 1,000 CY
 - Density Test — one test per 750 SF/lift

Prime Construction Group respectfully requests written clarification on the following:

Question No. 9(a) Which party is responsible for engaging the independent testing firm for the testing work identified in Section 312300 – the Owner or the Contractor?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 9(b) Which party is responsible for payment of the testing services identified in Section 312300?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 10(c) If the Owner will engage the testing firm, should bidders still include full pricing for Bid Item 18 – Materials Testing, or will that bid item be adjusted by addendum?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 10(d) If the Contractor is responsible for employing and paying the testing laboratory under Section 01 45 29, does the City intend to revise or clarify Section 312300 Paragraph 3.16 to eliminate the conflict?

Response: The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.

Question No. 10(e) Please confirm whether all testing frequencies listed in Section 312300 are to be included in Bid Item 18 – Materials Testing.

Response: The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 3

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



ADDENDUM 3 (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business:	
Contact Person:	
Email Address:	
Authorized Signature:	

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ -	\$ -
2	Erosion and Sediment Control	LS	1	\$ -	\$ -
3	Dewatering	LS	1	\$ -	\$ -

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ -	\$ -
5	Embankment Fill and Reconstruction	CY	22000	\$ -	\$ -
6	Place Topsoil & Seed	SY	45,000	\$ -	\$ -
7	Channel Construction	LS	1	\$ -	\$ -
8	Spillway Removal and Reconstruction	LS	1	\$ -	\$ -
9	Yard Piping	LS	1	\$ -	\$ -
10	Flow Meter	EA	1	\$ -	\$ -
11	Gate Valves	EA	2	\$ -	\$ -
12	Winged Concrete Endwal	EA	2	\$ -	\$ -
13	Type E Ditch Bottom Inlet	EA	2	\$ -	\$ -
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ -	\$ -
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ -	\$ -
15	FDOT 530 RipRap	TN	30	\$ -	\$ -
16	Weir Modification	LS	1	\$ -	\$ -
17	Electrical & Instrumentation Complete	LS	1	\$ -	\$ -
18	Materials Testing	EA	2	\$ -	\$ -

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ -	\$ -
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LEGEND
EA - EACH

	TOTAL BASE BID: \$ -
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LF - LINEAR FEET

LS - LUMP SUM

SY - SQUARE YARD

EJCDC Addendum No. 4 Dated June 17, 2026

Consisting of 2 Pages



CITY OF PORT ORANGE

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

ADDENDUM NO. # 4

June 17, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATIONS:

In response to Addendum #3 on the Reclaimed Water Reservoir Improvement Project, can you please confirm the unit of measure for Pay Item #18 – Materials Testing. Is the quantity of 2 *Each* correct, or is this intended to be a 1 *Lump Sum* pay item as is described in the price and payment procedures?

Response: Pay Item 18 should be a 1 Lump Sum pay item.

C. QUESTIONS AND ANSWERS:

Question No. 1 Whether the material is City-owned and available at no cost to the contractor.

Response: The City-owned material will be available to the contractor at no cost.

Question No. 2 Whether the material is suitable and available in sufficient quantity to fulfill the project backfills and embankments.

Response: The material is suitable and available in sufficient quantity for the project.

Question No. 3 Whether the contractor is responsible for loading the material.

Response: **The contractor is responsible for loading, transport, and spreading of the material.**

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 4

Catrina Wilson
Procurement Manager
cwilson@port-orange.org

EJCDC Addendum No. 5 Dated June 18, 2026

Consisting of 3 Pages



CITY OF PORT ORANGE

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

ADDENDUM NO. # 5

June 18, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATIONS:

Addendum No. 3 for Attachment 1 – “Schedule of Unit Pricing” is hereby revised as follows:

Attachment 1 – Schedule of Unit Pricing is hereby deleted in its entirety and replace with Addendum No. 5 Revised Schedule of Unit of Pricing.

C. QUESTIONS AND ANSWERS:

None

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 5

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



ADDENDUM 5 (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business:

Contact Person:

Email Address:

Authorized Signature:

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ -	\$ -
2	Erosion and Sediment Control	LS	1	\$ -	\$ -
3	Dewatering	LS	1	\$ -	\$ -

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ -	\$ -
5	Embankment Fill and Reconstruction	CY	22000	\$ -	\$ -
6	Place Topsoil & Seed	SY	45,000	\$ -	\$ -
7	Channel Construction	LS	1	\$ -	\$ -
8	Spillway Removal and Reconstruction	LS	1	\$ -	\$ -
9	Yard Piping	LS	1	\$ -	\$ -
10	Flow Meter	EA	1	\$ -	\$ -
11	Gate Valves	EA	2	\$ -	\$ -
12	Winged Concrete Endwal	EA	2	\$ -	\$ -
13	Type E Ditch Bottom Inlet	EA	2	\$ -	\$ -
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ -	\$ -
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ -	\$ -
15	FDOT 530 RipRap	TN	30	\$ -	\$ -
16	Weir Modification	LS	1	\$ -	\$ -
17	Electrical & Instrumentation Complete	LS	1	\$ -	\$ -
18	Materials Testing	LS	1	\$ -	\$ -

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ -	\$ -
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LEGEND
EA - EACH

TOTAL BASE BID: \$ -

LF - LINEAR FEET

LS - LUMP SUM

SY - SQUARE YARD

EXHIBIT “1”

Contractor’s Bid Schedule

Consisting of 2 Pages



(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business: J.D. Weber Construction

Contact Person: Joseph D. Weber

Email Address: Joeir@JDWeberConstruction.com

Authorized Signature: [Signature]

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ 55,000.00	\$ 55,000.00
2	Erosion and Sediment Control	LS	1	\$ 87,583.41	\$ 87,583.41
3	Dewatering	LS	1	\$ 65,000.00	\$ 65,000.00

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ 81,750.00	\$ 81,750.00
5	Embankment Fill and Reconstruction	CY	22000	\$ 29.00	\$ 638,000.00
6	Place Topsoil & Seed	SY	45,000	\$ 3.52	\$ 158,400.00
7	Channel Construction	LS	1	\$ 281,252.50	\$ 281,252.50
8	Spillway Removal and Reconstruction	LS	1	\$ 216,035.00	\$ 216,035.00
9	Yard Piping	LS	1	\$ 41,314.08	\$ 41,314.08
10	Flow Meter	EA	1	\$ 131,539.72	\$ 131,539.72
11	Gate Valves	EA	2	\$ 11,443.68	\$ 22,887.36
12	Winged Concrete Endwal	EA	2	\$ 12,645.00	\$ 25,290.00
13	Type E Ditch Bottom Inlet	EA	2	\$ 5,075.40	\$ 10,150.80
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ 289.20	\$ 60,732.00
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ 104.56	\$ 18,298.00
15	FDOT 530 RipRap	TN	30	\$ 280.00	\$ 8,400.00
16	Weir Modification	LS	1	\$ 11,100.00	\$ 11,100.00
17	Electrical & Instrumentation Complete	LS	1	\$ 231,740.00	\$ 231,740.00
18	Materials Testing	LS	1	\$ 16,300.00	\$ 16,300.00

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ 80,000.00	\$ 80,000.00
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LEGEND

EA - EACH

LF - LINEAR FEET

LS - LUMP SUM

TOTAL BASE BID: \$ 2,240,772.87

SY - SQUARE YARD

EXHIBIT “2”

Contractor’s Proposal

Consisting of 40 Pages

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement
 - ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
 - ☒ Form 7.4 – Drug Free Preference Statement
 - ☒ Form 7.5 – Public Entity Crimes Statement
 - ☒ Form 7.6 – Anti-Collusion
 - ☒ Form 7.7 – Statement of Bidder's Qualifications
 - ☒ Form 7.8 – Professional References for Previous Experience
 - ☒ Form 7.9 – List of Subcontractors
 - ☒ Form 7.10 – Scrutinized Companies Certification
 - ☒ Form 7.11 – Local Business Affidavit of Eligibility
 - ☒ Form 7.12 – E-Verify Affidavit
 - ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
 - ☒ Form 7.14 – Affidavit of Compliance With F.S. 287.138
 - ☒ N/A Form 7.15 – No Submittal Response
 - ☒ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
 - ☒ (Attachment 1) – Schedule of Unit Pricing
 - ☒ **Current Bonding Capacity Letter (as outlined in Section 6)**
 - ☒ Copy of all currently held Licenses (Contractor, Sunbiz, Sam.gov, etc.)
 - ☒ Current Tax Receipt of Bidder's municipality
 - ☒ **Original Bid Bond** or certified check or bank draft (as outlined in Section 6)
 - ☒ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format
- BY: J.O. Weber Construction Co.
Name of Business
- [Signature]
Authorized Signature
- 06/24/2026
Date

This document must be completed and returned with your Submittal

FORM 7.2 - BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

J.D. Weber Construction Co.

Name of Business

150 Business Center Dr.

Mailing Address

Ormond Beach, FL 32174

City, State & Zip Code

(386) 671-2727

Telephone Number

Joejr@JDWeberConstruction.com

E-mail Address

Authorized Signature

Joseph D. Weber - President

Printed Name and Title

54-2180252

Federal Identification No.

STATE OF: FL COUNTY OF: Volusia

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

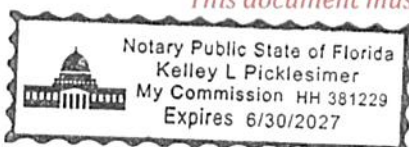
23rd day of June, 2026, by Joseph D Weber and who:

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

Kelley Picklesimer Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal



FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 1 Date: 05/29/26

Addendum# 3 Date: 06/17/26

Addendum# 2 Date: 06/01/26

Addendum# 4 Date: 06/17/26

addendum # 5 Date: 06/18/26

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

J.D. Weber Construction Co.
Name of Business

[Signature]
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

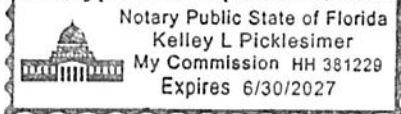
STATE OF: FL COUNTY OF: Volusia

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

23rd day of June, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

J.D. Weber Construction Co.

Name of Business

[Signature]
Authorized Signature

Joseph D. Weber - President

Printed Name and Title

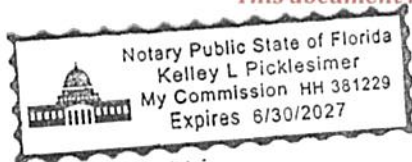
STATE OF: FL COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

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

This document must be completed and returned with your Submittal



FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

Before me, the undersigned Authority, personally appeared affiant Joseph D. Weber, who, being by me first duly sworn, made the following statement:

1. The business address of 150 Business Center Dr (name of Offeror or business) is J D Weber Construction Co.
2. My relationship to J D Weber Construction Co (name of Offeror or business) is President Joseph D. Weber (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____.~~ A copy of the order of the Division Administrative Hearing is attached.
(Draw a line through paragraph 7 if paragraph 6 above applies)

J.D. Weber Construction Co.
Name of Business

STATE OF: FL

COUNTY OF: Volusia

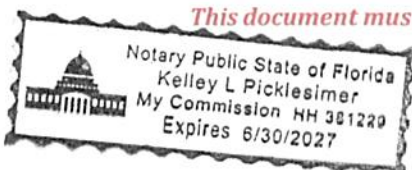
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of JUNE, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

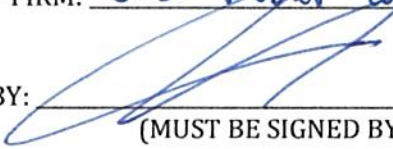
FORM 7.6 – ANTI-COLLUSION

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

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

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

NAME OF FIRM: J.D. Weber Construction Co.

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

PRINTED SIGNATURE: Joseph D. Weber

TITLE: President

ADDRESS: 150 Business Center Dr.

CITY, STATE AND ZIP CODE: Ormond Beach, FL 32174

TELEPHONE: (386) 671-2727

F.E.I.N.: 54-2180252

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: J.D. Weber Construction Co.
- B. Permanent main office address: 150 Business Center Dr. Ormond Beach, FL 32174
- C. Date organized: 08/2005
- D. If a corporation, where incorporated: Florida
- E. How many years have you been engaged in the business under your present firm or trade name? 20 yrs.
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: Underground Utilities, excavation, total site development
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No
- I. Have you ever defaulted on a contract? If so, where and why? No
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ 3,000,000.00
- M. Give bank name, contact name and phone number: PNC Bank Alex Riva 407-428-3021
- Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒ Yes ☐ No

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

STATE OF: FL

COUNTY OF: Volusia

J.D. Weber Construction Co.
Name of Business

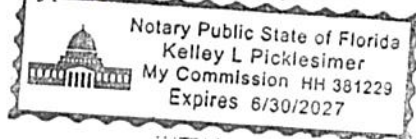
[Signature]
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

G702 APPLICATION and CERTIFICATE for PAYMENT

To: A.M. Weigel Construction Inc
Attn: Eric Sibermann

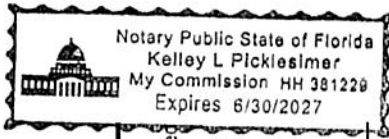
Project: Pathways Elementary Addition
Ormond Beach, FL 32174

Application No: 1
App. Date: June 20, 2026
Period to: June 20, 2026
Project No:
Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For: Via Architect:



CONTRACTOR'S APPLICATION FOR PAYMENT
Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM	1,697,606.23
2. Net Change By Change Orders	
3. CONTRACT SUM TO DATE	1,697,606.23
4. TOTAL COMPLETED AND STORED TO DATE	47,355.45

5. RETAINAGE:

a. 05% of Completed Work	2,367.77
b. of Stored Material	0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE	2,367.77
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	44,987.68
8. CURRENT PAYMENT DUE	44,987.68
9. BALANCE TO FINISH, INCLUDING RETAINAGE	1,652,618.55

CONTRACTOR: JD Weber Construction Co.
By: Joseph D. Weber
State of: Florida
Date: June 20, 2026
County of: Volusia

Subscribed and sworn before me this 20th day of June 2026
Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

AMOUNT CERTIFIED
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)
ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

G702

APPLICATION and CERTIFICATE for PAYMENT

To: C.W. Roberts Contracting, Inc
Project: Hand Ave Improvements
Ormond Beach, FL

Application No: 2

Distribution to:

- ☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

App. Date: June 17, 2026

Period to: May 31, 2026

Project No:

Contract Date:

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For:

Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM

374,585.45
2. Net Change By Change Orders

0.00
3. CONTRACT SUM TO DATE

374,585.45
4. TOTAL COMPLETED AND STORED TO DATE

114,375.25

5. RETAINAGE:

- a. 05% of Completed Work

5,718.77
- b. of Stored Material

0.00

TOTAL RETAINAGE

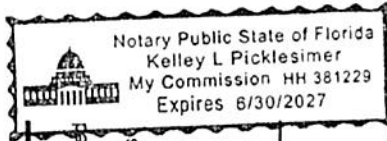
6. TOTAL EARNED LESS RETAINAGE

5,718.77
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

108,656.48
8. CURRENT PAYMENT DUE

78,289.02
9. BALANCE TO FINISH, INCLUDING RETAINAGE

30,367.46
- 265,928.97



The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: June 17, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 17th day of June 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order	0.00	

AMOUNT CERTIFIED
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

G702 APPLICATION and CERTIFICATE for PAYMENT

To: Rescon Group Project: Dave & Busters Brevard County, FL

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Application No: 1 App. Date: May 22, 2026 Period to: May 25, 2026 Project No: Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

Contract For: Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 2,290,302.00
2. Net Change By Change Orders
3. CONTRACT SUM TO DATE 2,290,302.00
4. TOTAL COMPLETED AND STORED TO DATE 363,495.44

5. RETAINAGE:

- a. 10% of Completed Work 36,349.55
- b. 10% of Stored Material 0.00

TOTAL RETAINAGE

36,349.55

327,145.89

6. TOTAL EARNED LESS RETAINAGE

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

8. CURRENT PAYMENT DUE

327,145.89

1,963,156.11

9. BALANCE TO FINISH, INCLUDING RETAINAGE

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: May 22, 2026

State of: Florida County of: Volusia

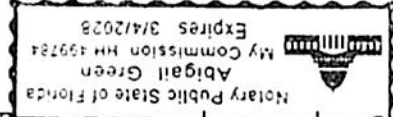
Subscribed and sworn before me this 22nd day of May 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: *Abigail Green* My Commission expires: 03/04/2028

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.



G702 APPLICATION and CERTIFICATE for PAYMENT

To: Old Smyrna Land Company, LLC Project: Florida Days Phase 4
 PO Box 1202 New Smyrna Beach, FL
 New Smyrna Beach, FL 32170
 From: JD Weber Construction Co.
 150 Business Center Drive
 Ormond Beach, FL 32174

Application No: 1
 App. Date: May 22, 2026
 Period to: May 25, 2026
 Project No:
 Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

Contract For: Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 2,579,186.55
2. Net Change By Change Orders 2,579,186.55
3. CONTRACT SUM TO DATE 160,916.72
4. TOTAL COMPLETED AND STORED TO DATE

5. RETAINAGE:

- a. 10% of Completed Work 16,091.67
- b. 10% of Stored Material 0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE 16,091.67
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT 144,825.05
8. CURRENT PAYMENT DUE 144,825.05
9. BALANCE TO FINISH, INCLUDING RETAINAGE 2,434,361.50

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: May 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of May 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document, my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Abigail Green My Commission expires: 03/04/2028

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

G702 APPLICATION and CERTIFICATE for PAYMENT

To: First Florida Wynwood, LLC
6555 NE 4th Ave.
Miami, FL 33138

Project: Hallmark Heritage Stormwater & MOB
Daytona Beach, FL

Application No: 14

App. Date: May 22, 2026

Period to: May 22, 2026

Project No:

Contract Date:

Distribution to:

☐ OWNER

☐ CONSTRUCTION MGR

☐ ARCHITECT

☐ CONTRACTOR

☐ OTHER

Contract For: Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM	8,415,914.00
2. Net Change By Change Orders	0.00
3. CONTRACT SUM TO DATE	8,415,914.00
4. TOTAL COMPLETED AND STORED TO DATE	5,759,247.90

5. RETAINAGE:

a. 10% of Completed Work	575,924.81
b. of Stored Material	0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE	575,924.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	5,183,323.09
8. CURRENT PAYMENT DUE	5,076,888.14
9. BALANCE TO FINISH, INCLUDING RETAINAGE	106,434.95
	3,232,590.91

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	0.00	0.00
Total approval this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order	0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D Weber Date: May 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of May 2026

Joseph D Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document; my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief

Notary Public: Abigail Green

My Commission expires: 03/04/2028

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

G702

APPLICATION and CERTIFICATE for PAYMENT

To: Vision General Contractors
Attn: Rob Taylor/Tim MarksProject: Tesla - Sanford
Sanford, FL

Application No: 7

Distribution to:

- ☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

App. Date: June 22, 2026

Period to: June 25, 2026

Project No:

Contract Date:

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For:

Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 4,005,280.00
2. Net Change By Change Orders 80,063.44
3. CONTRACT SUM TO DATE 4,085,343.44
4. TOTAL COMPLETED AND STORED TO DATE 3,134,294.72

5. RETAINAGE:

- a. 10% of Completed Work 313,429.47
- b. of Stored Material 0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

8. CURRENT PAYMENT DUE

9. BALANCE TO FINISH, INCLUDING RETAINAGE

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	80,063.44	0.00
Total approval this Month	0.00	0.00
TOTALS	80,063.44	0.00
NET CHANGES by Change Order	80,063.44	



CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber

State of: Florida

Date: June 22, 2026

County of: Volusia

Subscribed and sworn before me this 22nd day of June 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public Kelley L. Picklesimer

My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

TO CONTRACTOR:
CBI Construction - Home Office
431 Office Park Dr
Birmingham, Alabama 35223

PROJECT:
Cottages at Rolling Hills
300 Bushwood Circle
St. Augustine, Florida 32086

APPLICATION NO: 4

INVOICE NO:

PERIOD: 06/01/26 - 06/30/26

PROJECT NO: 25-006

CONTRACT NO: SC-25-006-001

CONTRACT DATE: 10/17/2025

CERTIFICATE DATE: 06/19/2026

SUBMITTED DATE:

FROM SUBCONTRACTOR:

JD Weber Construction
150 BUSINESS CENTER DR ORMOND
BEACH, FLORIDA 32174-2993 United States
Ormond Beach, Florida 32174

SUBCONTRACT FOR: site clearing, grading, utilities, paving, Retaining Wall

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Subcontract. Continuation Sheet is attached.

1.	Original Contract Sum	\$9,269,235.85
2.	Net change by change orders	\$530,780.30
3.	Contract Sum to date (Line 1 + 2)	\$9,800,016.15
4.	Total completed and stored to date (Column G on detail sheet)	\$2,251,516.41
5.	Retainage:	
	a. 10.00% of completed work	\$225,151.66
	b. 0.00% of stored material	\$0.00
	Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$225,151.66
6.	Total earned less retainage (Line 4 less Line 5 Total)	\$2,026,364.75
7.	Less previous certificates for payment (Line 6 from prior certificate)	\$746,214.28
8.	Current payment due:	\$1,280,150.47
9.	Balance to finish, including retainage (Line 3 less Line 6)	\$7,773,651.40

The undersigned certifies that to the best of the Subcontractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

SUBCONTRACTOR: JD Weber Construction

Signed by:

By: Joe Weber, Jr

Date: 6/22/2026

State of:

County of:

Subscribed and sworn to before
me this _____ day of _____

Notary Public:

My commission expires:

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:		\$145,774.40	\$0.00
Total approved this month:		\$439,351.00	\$(54,345.10)
Totals:		\$585,125.40	\$(54,345.10)
Net change by change orders:		\$530,780.30	

G702 APPLICATION and CERTIFICATE for PAYMENT

To: ICI Homes
 Attn: Richard Smith
 Project: Westlake 6A
 Volusia County
 Application No: 6
 App. Date: June 22, 2026
 Period to: June 25, 2026
 Project No:
 Contract Date:
 Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER
 From: JD Weber Construction Co.
 150 Business Center Drive
 Ormond Beach, FL 32174
 Contract For: Via Architect:



CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM
2,927,847.50
2. Net Change By Change Orders
7,245.00
3. CONTRACT SUM TO DATE
2,935,092.50
4. TOTAL COMPLETED AND STORED TO DATE
2,687,920.16
5. RETAINAGE:
 a. 10% of Completed Work
268,792.03
 b. of Stored Material
0.00

6. TOTAL EARNED LESS RETAINAGE
288,792.03
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
2,419,128.13
8. CURRENT PAYMENT DUE
2,254,591.12
9. BALANCE TO FINISH, INCLUDING RETAINAGE
164,537.01
- 515,964.37

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.
 By: Joseph D. Weber
 State of: Florida
 Date: June 22, 2026
 County of: Volusia

Subscribed and sworn before me this 22nd day of June 2026
 Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	7,245.00	0.00
Total approval this Month	0.00	0.00
TOTALS	7,245.00	0.00
NET CHANGES by Change Order	7,245.00	

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

Year	Make/Model	Fleet #	Type	VIN / Serial #	Tag #	Tag Renew	Driver	FL License #
2006	CAT D3GXL	BD-01	M	JMH02164	Dozer		Dozer	
2016	CATD4K2	BD-02	M	KR200322	Dozer		Dozer	
	D-51	BD-03	M	16478	Dozer		Dozer	
2024	D-51	BD-04	M	B25679	Dozer		Dozer	
2019	D-51	BD-05	M	B20387	Dozer		Dozer	
	CAT D4	BD-07	M	RLT00309	Dozer		Dozer	
	Komatsu D61PXI-24	BD-08	M	B65877	Dozer		Dozer	
2024	Komatsu D39PXI-24	BD-09	M	101894	Dozer		Dozer	
2025	Komatsu D51 PXI-24	BD-10	M	16943	Dozer		Dozer	
2006	CAT 330LC	EX-01	M	DKY04595	Excavator		Excavator	
	Komatsu PC300LC-7EO	EX-02	M	A88145	Excavator		Excavator	
	CAT 313	EX-03	M	JHR10399	Excavator		Excavator	
	CAT 308	EX-04	M	GG082264	Excavator		Excavator	
2023	CAT 340	EX-05	M	EFH10142	Excavator		Excavator	
2010	CAT 312D L	EX-06	M	XGK00220	Excavator		L Hydraulic Excavator	
2014	Cat 308CE2CRS8	EX-07	M	FJX00339	Excavator		Excavator	
2015	CAT 320ELRR	EX-08	M	TFX01081	Excavator		Hydraulic Excavator	
	Komatsu PC55MR-5	EX-09	M	23Z19-J	Excavator		Excavator	
	Caterpillar 301.7 DCR	EX-10	M	LJ800490	Excavator		Mini Excavator	
	CAT 304 E2	EX-11	M	ME403952	Excavator		Excavator	
2018	CAT 336	EX-12	M	RKB01968	Excavator		Excavator	
2016	CAT 336	EX-13	M	RKB20567	Excavator		Excavator	
2020	CAT 336	EX-14	M	GSF10065	Excavator		Excavator	
2020	CAT 304	EX-15	M	ME407873	Excavator		Excavator	
2020	CAT 336C	EX-16	M	GSF10182	Excavator		Excavator	
	CAT 336FL	EX-17	M	RKB07559	Excavator		Excavator	
2024	Komatsu PC138USLC-11	EX-18	M	65380	Excavator		Excavator	
	CAT 305-07CR	EX-19	M	5G503381	Excavator		Excavator	
2025	CAT 325	EX-20	M	325CTE150488	Excavator		Excavator	
2025	CAT315	EX-21	M	WKX50623	Excavator		Excavator	
2015	CAT 120 Motor Grader	MG-01	M	OM9H00322	Grader		Grader	
2020	CAT 120 Motor Grader	MG-02	M	OY9A00136	Grader		Grader	
2023	CAT 140 Motor Grader	MG-03	M	N9400444	Grader		Grader	
2024	JD Motor Grader	MG-04	M	1DW672GPLRF719990	Grader		Grader	
	JD Dump Truck 260E	ORT-03	M	1DW260ETHNF713821	Truck		Off Road Truck	
	JD Dump Truck 260E	ORT-04	M	1DW260ETPNF714814	Truck		Off Road Truck	
2023	JD Dump Truck 260P	ORT-05	M	1DW260PAAPFB07207	Truck		Off Road Truck	
2024	JD Dump Truck 260E	ORT-06	M	1DW260PAHPFB07100	Truck			
2006	CAT 420EIT KMW	RT-01	M	KMW00218	Rubber Tire Hoe		Backhoe Loader	
2021	CAT 289D3 CH2U	SS-01	M	JX907173	Skid Steer		Skid Steer	
2016	CAT 279D Skid Steer	SS-02	M	GTL0057	Skid Steer		Skid Steer	
2021	CAT 289D3 CH2U	SS-03	M	JX907153	Skid Steer		Skid Steer	
2019	CAT 289D	SS-04	M	JX900865	Skid Steer		Skid Steer	
2020	CAT 289D	SS-05	M	JX902854	Skid Steer		Skid Steer	
2021	CAT 299D	SS-06	M	DY904234	Skid Steer		Skid Steer	
2024	CAT 289D3	SS-07	M	JX919561	Skid Steer		Skid Steer	
2024	CAT 265 CH2U	SS-08	M	KR402860	Skid Steer		Skid Steer	
	JD Tractor	TCT-01	M	RW4755P002491	Tractor			
	Massey Ferguson Tractor	TCT-02	M	AG3M46070MJM70201	Tractor		Tractor	
2023	Kubota Tractor	TCT-03	M	KBUMFCDRVN8F94412	Tractor		Tractor	
2025	JD Tractor	TCT-04	M	1L06125MPSH517766	Tractor		Tractor	
2021	CAT CS54B	VR-01	M	CS501067	Roller		Roller	
	CAT CS11GC	VR-02	M	CAT0CS11CRFL00153	Roller		Roller	
	CAT CP56B	VR-03	M	P5600269	Roller			
	SAKAI R2H-4	VR-04	M	1R7-70386	Roller		Roller	
	CS44B	VR-05	M	4G300526	Roller		Roller	
	CAT CS11GC	VR-06	M	CAT0CS11JRFL00109	Roller		Roller	
	Bomag Pneumatic Roller	VR-07	M	1.01539E+11	Roller		Roller	
2006	CAT 938GIIQC-01	WL-01	M	RTB02132	Loader		Loader	
2006	CAT 938GII-02	WL-02	M	RTB01973	Loader		Wheel Loader w/Bucket	
2006	CAT 938GII-03	WL-03	M	CRD01897	Loader		Wheel Loader	
2015	CAT 938K-04	WL-04	M	SWL04224	Loader		Wheel Loader	
2016	Komatsu WA320-7	WL-05	M	A36525	Loader		Wheel Loader	
2017	CAT 938-M	WL-06	M	J3R03917	Loader		Wheel Loader	
2018	Komatsu 320-8	WL-07	M	A38517 (Lucio)	Loader		Wheel Loader	
	Komatsu WA270-8	WL-08	M	83866 (Juan)	Loader		Wheel Loader	
2009	Komatsu WA270-8	WL-09	M	83869 (Miguel)	Loader		Wheel Loader	
	CAT 930M	WL-10	M	0F5K00871	Loader		Wheel Loader	
2022	CAT 906M	WL-11	M	H6605372	Loader		Wheel Loader	
	Komatsu WA270-8	WL-12	M	A28702	Loader		Wheel Loader	
2023	Komatsu WA270-8	WL-13	M	A30124	Loader		Wheel Loader	
2024	Komatsu WA270-8	WL-14	M	A30610	Loader		Wheel Loader	
	CAT 938	WL-15	M	EZY02374	Loader		Wheel Loader	
2012	CAT 725 Water Tanker	WT-01	M	BIL02783				
	Brush Hog		M	20218			SS Attachment	
	Grapple		M	AE6H04869			SS Attachment	
	Broom	BA-18	M	No S/N			SS Attachment	
	Catch Broom	BU-118	M	LXB03019			SS Attachment	
2023	Bush Hog 8" Rotary Cutter		M	1HJKR1223430483			Tractor Attachment	

Joseph D. Weber

**385 Airport Road
Ormond Beach, Florida 32174**

***joejr@jdweberconstruction.com*
office (386) 671-2727
mobile (386) 547-6093**

BACKGROUND SUMMARY

I am a highly motivated, talented, and very organized individual with a thorough knowledge of utility construction and related work. I worked as an employee of a very distinguished and reputable utility contracting company as a member of a pipe laying crew, and over time worked my way into a project management position handling multiple jobs simultaneously under construction.

PROFESSIONAL ACCOMPLISHMENTS

- Florida State Certified Underground Utility and Excavation Contractor - License No. CUC1224075
- Completed a Certified Competent Person Training Program
- Completed a Certified Confined Space Entry Program
- Board Member of the Underground Contractors Association of Central Florida, Inc.
- President of NUCA of Central Florida 2016 - 2017

CAREER HISTORY

Volusia Construction Company, Inc.
South Daytona, Florida

February 1999 to August 2005

WLW Construction, Inc.
Sorrento, Florida

August 2005 to February 2006

J.D. Weber Construction Co.
Ormond Beach, Florida

March 2006 to Present

I am president and co-owner of an underground utility construction company. We have successfully completed numerous private, commercial, and municipal construction projects ranging in value from \$5,000.00 to \$6.0 million. We have successfully completed projects for the FDOT as a subcontractor to a prime paving contractor. We negotiate and competitively bid construction projects in the central Florida area and have a \$20 million bond line. We are on a short list of local contractors with many local municipalities to bid on and perform scheduled and emergency repair work on their infrastructure system.

EDUCATION

Mainland Senior High School

Daytona Beach Community College
Daytona Beach, FL

Chad Baker
115 CR 110
Bunnell FL 32110

Experienced Superintendent with exceptional skills in commercial and private aspects of site earthwork and site utility work. My main strongholds are my ability to perform intense projects with safety, productivity client satisfaction and maintain the upmost profit. I strive to provide the best quality, most profit, and the safest work environment on every project I encounter.

Professional Experience

Ormond Beach, FL

JD Weber Construction

May 2016- Present

Superintendent

- Schedule, coordinate day to day operations
- Attend progress meetings and uphold schedule obligations to the best ability
- Provide adequate material, survey, and necessary instruction to crews for day to day operations
- Enforce a safe work environment in every situation on a daily basis
- Uphold the quality and integrity of the work we perform
- Provide a positive and profitable work environment for all team members

New Smyrna Beach FL

Hazen Construction

June 2008- May 2016

Foreman

- Supervised numerous crews on major roadway and commercial site projects
- Installed gravity sewer and storm drain systems
- Constructed roadways, both municipal and private
- Constructed airport taxiways, runways, and aprons at various airfields to FAA standards
- Constructed roadway to DOT specifications and standards
- Designed and maintained MOT plans on numerous projects
- Installed RCP to 96" in diameter

Ormond Beach FL

Daytona Underground

April 2006- June 2008

Foreman

- Installed water, sewer, and storm drain systems
- Installed gravity sewer and storm drain systems to depths of 23'
- Produced accurate and timely take-off of material to perform tasks
- Operated equipment

Daytona Beach, FL

RA Scott Construction

July 2000-April 2006

Foreman

- Led a crew of 6 daily installing water, sewer, and storm drain piping
- Operated all types of equipment relating to pipe installation (Loader, Bulldozer, Excavator, Roller)
- Established and maintained dewatering operations
- Set Sanitary and Storm Sewer lift stations
- Installed RCP from 12" diameter to 84" diameter

Education

Flagler Palm Coast High School

Additional Skills

- Excellent communication and organizational skills
- Wide knowledge of all aspects of earthwork and utility work
- Highly skilled in operation of construction equipment
- Great skills in determining proper phasing of projects of any size

Chad Kirby

(386) 337-2232
kirbycd@yahoo.com

1640 Juno Trail Unit 204B
Astor, FL 32102

SUMMARY: EXPERIENCE:

JD Weber Construction **August 2023 – Present** **Ormond Beach, FL**
Superintendent – Mass Excavation, Site Work Construction & Underground Utilities

- Schedule, coordinate day to day operations for excavating ponds, fill lots, fill roads
- Schedule equipment and material, and provide necessary instruction to crews for day to day operations
- Meet with owners for pre-construction and weekly meetings and updates
- Enforce a safe work environment in every situation on a daily basis
- Uphold the quality and integrity of the work we perform
- Provide a positive safe environment and learning experience for all employees

Phillips & Jordan **March 2015 – May 2022** **Knoxville, TN**
Superintendent - Mass Excavation, Site Work Construction, & Underground Utilities

- West Palm Beach, FL - C-51 Reservoir
- Brunswick, GA - 150,000 Tons of coal ash removal
- Cheyenne, WY – Successful completion of the Microsoft iCloud building pad expansion
- Successfully built projects in the wet soils of Florida and claylike soils of northern Alabama
- Maintained job water management policies, field reports, and project budgets
- Work with project engineers and project managers to foresee design flaws in advance

Tootle Construction **October 2013 – March 2015** **Longwood, FL**
Superintendent/Quality Control Manager – Landscape, Hardscape, Underground Utility Modifications (\$2.5 Million Contract Value)

- Responsible for subcontractor indoctrination/training in accordance with EM385-1-1
- Assist, review & administer site specific QCP, APP, & EPP plans for submission and approval
- Create and review submittal registries and approvals for furnished materials, testing and equipment
- Develop and administer required Preparatory, Initial and Follow Up Meetings along with Activity Hazard Analysis (AHAs)
- Prepare RFI's and daily reports required by USACE
- Develop and maintain professional and courteous relationship with USACE QA Inspector
- Perform as integral team member to insure each project is completed within allotted budget and schedule

US Army Corps Of Engineers **April 2010 – October 2013** **New Jersey/Afghanistan**
Quality Assurance Specialist – Beach Dredging/Refurbishment, Hazard Waste Removal, War Time Reconstruction

- Supervised site safety and project quality.
- Reviewed contractors site safety plan and APP plan
- Maintained communication with Army Generals to provide updated schedules and budgets
- 250K CY of beach dredging and placement on New Jersey coast line
- 48K barrels of hazardous waste removal via railroad along with 6K feet of slurry wall placement in New Jersey
- Roadways & airfield reconstruction throughout county of Afghanistan
- Instructed US Government and local civilians on how to properly operate heavy equipment
- Received Civilian Combat Pin, Article 5 NATO Medal, Secretary Of Defense War On Terrorism, & US Army Achievement

Fullard Environmental **May 2008 – March 2010** **Ford City, PA**
Site Supervisor – 8(a) Contractor for US Army Corps of Engineers (3 Projects totaling \$15 Million over 3 years)

- Supervision of 9 man crew to replace 315K tons of beach sand for Cape May, NJ
- Supervision of 9 man crew to replace 140K tons of beach sand for Avalon Beach, NJ
- Supervision of 19 man crew to construct 1.5 mile levee at Fort Mott, NJ dredge spoil site

Ginn Golf**January 2005 – April 2008****Celebration, FL****Regional Earthwork Supervisor – Turnkey Golf Course Construction & Residential Site Development**
Responsible for supervision of projects in Florida, Georgia, North & South Carolina, Bahamas, & Virgin Islands

- Responsible for supervision of projects in Florida, Georgia, North & South Carolina, Bahamas, & Virgin Islands
- Maintained budgets, field reports, and water management policies and reports
- Reviewed and maintained daily and weekly jobsite reports for project foreman
- Provided design input during county board meetings alongside architects and project managers
- Ability to successfully build projects in wet soils of Florida and rocky sub surfaces of the Carolinas
- Supervised the logistics of transporting equipment from the States to the Bahamas and Virgin Islands

Halifax Paving**January 2000 – January 2005****Ormond Beach, FL****Superintendent – Turnkey Commercial & Residential Site Contractor**

- Supervised multiple projects and crews
- Maintained communication with project owners and subcontractors
- Worked with project engineers and project managers to foresee design flaws in advance
- Maintained and modified budgets to track schedules and prepare daily reports

Heavy Equipment Operator

- Performing safe operation of heavy construction equipment for site development.
- Working along with surveyors to transfer elevations.
- Communicating with project supervisors to maintain project completion dates.

SKILLS:**Computer:**

MS Office (Including MS Projects), Timberline Project Manager v8.2.0,
QCS/RMS Process pay request and maintain certified payroll when
necessary

Field:

Maintain multiple site work projects and crews simultaneously
Heavy Equipment Operator: Bull Dozers, Front End Loaders, Excavators, & Scrapers
Beginning knowledge in surveying

REFERENCES:

Pat Williams
Vice President /Phillips & Jordan

(865) 250-4125

Robert Thomaston
Project Manager/ Phillips &
Jordan
(407) 466-9305

Steve Thompson
Vice President/ Phillips & Jordan
(865) 310-8752

Willie B. Grier
1324 N Shangri La Drive
South Daytona, FL 32119
386-847-1990

Employment:

JD Weber Construction Company Inc., Ormond Beach, FL

March 2011 - Present

Superintendent

- Attend progress meetings
- Schedule and coordinate daily work schedules for crews
- Provide material, labor and instructions for crews to insure seamless work process
- Ensure the safety of the employees and the job site
- Uphold the quality and integrity of the work

Grier's Masonry Inc., Palm Coast, FL

January 2004 – February 2011

Concrete Foreman

- Set concrete forms to the desired pitch and depth and aligned them
- Spread, leveled and smoothed concrete using rake, shovel, and hand floated
- Molded expansion joints and edges using an edging tools, joiners, and straight edge
- Monitored how the wind, heat, or cold affected the curing of the concrete
- Signaled truck driver to position truck to facilitate pouring concrete

Education:

Atlantic High School- Port Orange, FL
High School diploma

1999 - 2003

Certifications:

- OSHA 10 Hour Safety Training
- HeartSaver First Aid CPR AED Certified

Equipment:

- Loader
- Backhoe
- Dozer
- Trackhoe
- Laser



JD WEBER CONSTRUCTION

TOTAL SITE DEVELOPMENT



List of Key Employees

Joseph D. Weber – President – 28 year's experience

Chad Baker – Operations Manager – 28 year's experience, 11 years employment

Will Grier – General Superintendent, 21 year's experience, 14 years employment

Chad Kirby – General Superintendent, 34 year's experience, 5 years employment

Scott Leffler – Project Manager, 9 year's experience, 2 years employment

Josh Camiletti – Chief Estimator, 12 year's experience, 6 years employment

Carole Granito – Accounting Manager / Payroll, 31 year's experience, 16 years employment

Kelley Picklesimer – Assistant Accounting Manager, 11 year's experience, 7 years employment

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: Plantation Oaks of Ormond Beach II, LLC
Contact Person: Parthur Mychenberg
City, State: Ormond Beach, FL
Telephone Number: (386) 212-1515
Email Address: PRmych@gmail.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 6,687,509
Start/End Date of Contract: July 2024
2. Company Name: Old Mission Key, LLC
Contact Person: Buddy Lacour
City, State: Edge water, FL
Telephone Number: (386) 788-3043
Email Address: buddy@lacourandcompany.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 2,979,715.63
Start/End Date of Contract: March 2024
3. Company Name: Volusia Residential Construction, LLC
Contact Person: Dick Smith
City, State: Flagler, FL
Telephone Number: (386) 547-4729
Email Address: dsmith@ICIhomes.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 3,375,680
Start/End Date of Contract: December 2023

This document must be completed and returned with your Submittal.

FORM 7.9 - LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: Formasters Concrete Specialists

Description of Work: Fabriform Retention, Winged Concrete end walls, Spillways

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 2

Name: Crafton Electric Inc.

Description of Work: all electrical and pannel work

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 3

Name: Rogers Landworks

Description of Work: Clearing & Grubbing wooded areas

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Joseph D. Weber President, on behalf
(Print Name and Title)

of J.D. Weber Construction ("Company"), certify that J.D. Weber Construction
(Company Name) (Company Name)

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

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

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

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

J.D. Weber Construction Co.
COMPANY NAME

Joseph D. Weber
PRINT NAME

STATE OF FLORIDA

[Signature]
SIGNATURE

President
TITLE

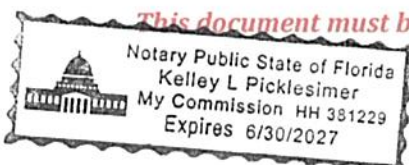
COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

Kelley Picklesimer Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

*This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida***THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:**Project# (as applicable): 26-04-CWBusiness Name: J.D. Weber Construction Co.Contact Person/Title: Joe Weber Jr. - PresidentMailing Address: 150 Business Center DrCity, State, Zip: Ormond Beach, FL 32174Phone Number: (386) 671-2727Email address: Joejr@JDWeberConstruction.com

Physical Presence of Business:

☒ Headquarters☒ Principal Place of Business

Within Legal Boundaries:

☐ City of Port Orange☒ Volusia County☒ State of FloridaFEIN (Federal Employer Identification Number): 54-2180252

Business Structure:

☒ Corporation☐ LLC☐ Partnership☐ Sole Proprietorship☐ Other (Specify): _____****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION******ATTESTATION – I understand that:**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

J.D. Weber Construction Co.

Name of Business

STATE OF: FL

Authorized Signature

COUNTY OF: VolusiaJoseph D Weber - President

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D Weber and who:

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

Kelley Picklesimer Notary Public, State of FL

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Reclaimed Water Reservoir Improvement Project

Solicitation Number: 26-04-CW

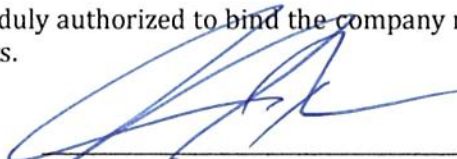
I, the undersigned hereby certify that J.D. Weber Construction Co. (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

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

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

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

Joseph D. Weber - President
Print or Type Name, Title


Signature of Affiant

54-2180252
Federal Employer ID Number (FEIN)

404289
E-Verify Number

STATE OF FLORIDA

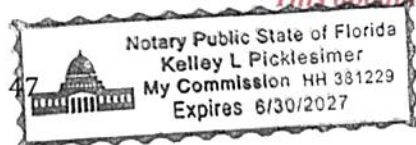
COUNTY OF: FL

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of JUNE, 2026, by Joseph D Weber and who:

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

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

This document to be completed and returned with your Submittal



My Company Profile

Company Information

Company Name

J D Weber Construction, Inc.

Doing Business As (DBA) Name

Company ID

404289

Enrollment Date

Mar 27, 2011

Employer Identification Number (EIN)

542180252

Unique Entity Identifier (UEI)

DUNS Number

624450586

Total Number of Employees

20 to 99

NAICS Code

237

Sector

Construction

Subsector

Heavy and Civil Engineering Construction

**FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

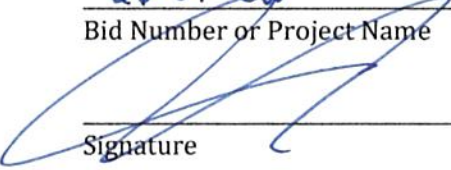
**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

J.D. Weber Construction Co.
Organization Name

26-04-CW
Bid Number or Project Name

Joseph D. Weber - President
Name and Title of Authorized Representative


Signature

6/23/26
Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

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

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

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

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

Date: June 23, 2026

Signed: _____

Entity: J.D. Weber Construction

Name: Joseph D. Weber

Title: President

STATE OF: FL

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

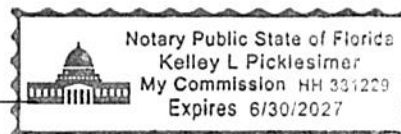
Kelley Picklesimer

Notary Public, State of Florida at Large:

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

(seal)

My commission expires: 6/30/2027



This document must be completed and returned with your Submittal

FORM 7.15 – NO BID RESPONSE

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

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

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

Solicitation: ITB 26-04 Reclaimed Reservoir Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

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

☐ Insufficient time to respond

☐ Specifications unclear (please explain below)

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

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

☐ Unable to meet specifications

☐ Unable to meet bond requirements

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

☐ Unable to meet insurance requirements

☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

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

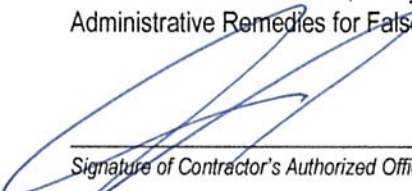
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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



Signature of Contractor's Authorized Official

Joseph D. Weber - President

Name & Title of Contractor's Authorized Official

Date: 10/22/26

This document must be completed and returned with your Submittal



(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business: J.D. Weber Construction

Contact Person: Joseph D. Weber

Email Address: Joeir@JDWeberConstruction.com

Authorized Signature: [Signature]

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ 55,000.00	\$ 55,000.00
2	Erosion and Sediment Control	LS	1	\$ 87,583.41	\$ 87,583.41
3	Dewatering	LS	1	\$ 65,000.00	\$ 65,000.00

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ 81,750.00	\$ 81,750.00
5	Embankment Fill and Reconstruction	CY	22000	\$ 29.00	\$ 638,000.00
6	Place Topsoil & Seed	SY	45,000	\$ 3.52	\$ 158,400.00
7	Channel Construction	LS	1	\$ 281,252.50	\$ 281,252.50
8	Spillway Removal and Reconstruction	LS	1	\$ 216,035.00	\$ 216,035.00
9	Yard Piping	LS	1	\$ 41,314.08	\$ 41,314.08
10	Flow Meter	EA	1	\$ 131,539.72	\$ 131,539.72
11	Gate Valves	EA	2	\$ 11,443.68	\$ 22,887.36
12	Winged Concrete Endwal	EA	2	\$ 12,645.00	\$ 25,290.00
13	Type E Ditch Bottom Inlet	EA	2	\$ 5,075.40	\$ 10,150.80
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ 289.20	\$ 60,732.00
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ 104.56	\$ 18,298.00
15	FDOT 530 RipRap	TN	30	\$ 280.00	\$ 8,400.00
16	Weir Modification	LS	1	\$ 11,100.00	\$ 11,100.00
17	Electrical & Instrumentation Complete	LS	1	\$ 231,740.00	\$ 231,740.00
18	Materials Testing	LS	1	\$ 16,300.00	\$ 16,300.00

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ 80,000.00	\$ 80,000.00
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LEGEND

EA - EACH

LF - LINEAR FEET

LS - LUMP SUM

TOTAL BASE BID: \$ 2,240,772.87

SY - SQUARE YARD

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute, and appoint:

JAMES C. CONGELIO and JAMES N. CONGELIO

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds, consents of surety, or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

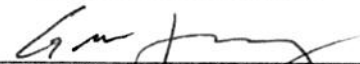
This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011:

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By 
David Satory, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC

By 
Gabriel Jacquez, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC



IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 26th day of January, 2026.

State of Illinois
County of Cook



Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

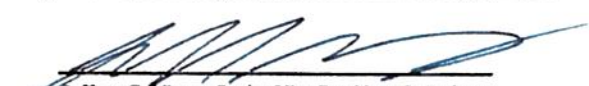
On this 26th day of January, 2026 before me, a Notary Public personally appeared David Satory, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC, and Gabriel Jacquez, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.




Karen M. Szweda, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 24th day of June, 2026.


Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC and WIC



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

WEBER, JOSEPH D

J.D. WEBER CONSTRUCTION CO.
150 BUSINESS CENTER DR
ORMOND BEACH FL 32174

LICENSE NUMBER: CUC1224075

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com

ISSUED: 06/26/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



2026 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P05000113030

Entity Name: J.D. WEBER CONSTRUCTION CO.

Current Principal Place of Business:

150 BUSINESS CENTER DRIVE
ORMOND BEACH, FL 32174

Current Mailing Address:

P.O. BOX 730386
ORMOND BEACH, FL 32173

FEI Number: 54-2180252

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

WEBER, JOSEPH D
150 BUSINESS CENTER DRIVE
ORMOND BEACH, FL 32174 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title D
Name WEBER, JOSEPH D
Address 385 AIRPIORT ROAD
City-State-Zip: ORMOND BCH FL 32174

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: JOSEPH D WEBER

PRESIDENT

01/29/2026

Electronic Signature of Signing Officer/Director Detail

Date

BID BOND

BID BOND

Bond No.: **N/A**

KNOW ALL MEN BY THESE PRESENTS that **J.D. Weber Construction Co.**, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at **150 Business Center Dr., Ormond Beach, FL 32174**, Tel.: **386-671-2727**, (hereinafter called "PRINCIPAL"), and **Swiss Re Corporate Solutions America Insurance Corporation**, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at **1200 Main St. Suite 800, Kansas City, MO 64105**, Tel.: **813-498-1183** (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of **Five Percent of Amount Bid** dollars and (**00**)/100 (\$ **5%**), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated **June 24**, 20**26**, for:

Project Name/Bid No.: Reclaimed Water Reservoir Improvement Project / ITB #26-04-CW

**Project Address: 2401 Bear Trail
Port Orange, FL 32128**

Legal Description: Reclaimed Water Reservoir Lake A and Lake B improvements

Description of Work: Construction of a ditch to connect Lake "A" to Lake "B" in lieu of existing interconnecting piping, Raising the berm height of Lake "B" by one foot. Existing weir modification. Improving reclaimed water piping & intake pump electrical upgrades.

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this **24th** day of **June**, 20**26**, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: **J.D. Weber Construction Co.**

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

Signature

ATTEST:

Signature

Melissa Beckworth, Account Executive
Corporate Secretary (Affix Corporate Seal)

SURETY: **Swiss Re Corporate Solutions America Insurance Corporation**

Attorney-in-Fact (signature)

James C. Congelio, Attorney-in-Fact

Name & Title

James C. Congelio, FL Resident Agent

Name of Local Resident Agent

Tampa, Florida 33607

City, State, Zip

813-498-1183

Telephone:

A.M. Best No.: **A+, XV** NAIC No.: **29874**

STATE OF **Florida**

COUNTY OF **Hillsborough**

Before me this day personally appeared **James C. Congelio** (affiant), who, being

duly sworn, deposes and says that he/she is the Attorney-in-Fact for the **Swiss Re Corporate Solutions America Insurance Corporation**

(corporate surety) and that this person has been authorized by

Swiss Re Corporate Solutions America Insurance Corporation (corporate surety) to execute the foregoing bond on behalf of the

Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant **James C. Congelio**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this **24th** day of **June**, 2026, by **James C. Congelio** and who:

☒ Is personally known to me; or ☐ has produced **N/A** as identification.

Signature of Notary Public **Melissa Beckworth** Notary Public, State of **Florida**

Printed, typed or stamped name, commission and expiration: **January 13, 2027**

Melissa Beckworth, Notary Public

END OF BID BOND

This document must be completed and returned with your Submittal



EXHIBIT “3”

ITB 26-04-CW RECLAIMED Water Reservoir Improvement Project

Consisting of 71 Pages

(Not attached, on file with City Clerk)



CITY OF PORT ORANGE

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

ADDENDUM NO. # 1

May 29, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS:

None

C. QUESTIONS AND ANSWERS:

Question No. 1 Do you have the City's budget for this project? Or the engineer's estimate?

Response: **Estimated Cost is \$2,750.00.**

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 1

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



CITY OF PORT ORANGE

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

ADDENDUM NO. # 2

June 1, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATION:

Correction to Addendum No. 1. The estimated dollar amount for this project is \$2,750,000.00 and not \$2,750.00.

C. QUESTIONS AND ANSWERS:

None

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 2

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



CITY OF PORT ORANGE

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

ADDENDUM NO. # 3 **June 17, 2026**

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATION:

Revised Attachment No. 1 – “Schedule of Unit Pricing” is hereby attached to this Addendum No. 3.

C. QUESTIONS AND ANSWERS:

Question No. 1 Is this project subject to state bill SB 674, which went into effect on July 1, 2024?

Response: **This project is not subject to Florida Senate Bill 674**

Question No. 2 Is this project subject to BABAA, AIS or any other federal requirement for domestically made products?

Response: **This project is not subject to BABAA, AIS or any other federal requirements.**

Question No. 3 If domestic materials will be needed, what materials will fall under this requirement?

Response: **This project is not subject to domestic materials requirements.**

Question No. 4. If State of Florida or Federal funds are being used, where are those funds coming from?

Response: **This project is fully funded by the City of Port Orange. No State or Federal funds are being used.**

Question No. 5 On Plan Page C-109, Materials Note D, it states “Where groundwater conditions require provision for relief of hydrostatic uplift, 7/8” (22MM) I.D weep tube assemblies shall be inserted through the fabric”. It later states “The weep tube assemblies shall be located as called for on the plans” however there is no clear detail or mention of weep tube locations/spacing within the Fabriform being called for on that page.

Question No. 5(a) Can you provide clarification on the location of the weep tube assemblies, or if they are required throughout the entire installation of the Fabriform.

Response: **Weep tube assemblies are not required for this project.**

Question No. 5(b) Can you provide the required spacing placements of said weep tube assemblies?

Response: **Weep tube assemblies are not required for this project.**

Question No. 6 We are finding quantities not matching and the elliptical size doesn’t match the drawings with the bid tab. Do we bid according the bid tab, or does the engineer need to look at.

Response: **For bid item 14B, the correct pipe size is 14 x 23 ERCP. Use the estimated quantity of 175 LF listed on the bid form**

Question No. 7 During our review of the contract documents for the above-referenced project, Prime Construction Group, Inc. identified a potential alternative means of accomplishing part of the embankment raise scope. We respectfully request written clarification as to whether dredging material from the existing reservoir/lake areas has been evaluated or may be considered for use in construction of the proposed berm raise, subject to material suitability and compliance with the contract documents.

Response **For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated**

material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 8 Section 011100 – Summary of Work states that the work includes raising the berm height of Lake B by one foot, modifying the emergency overflow weirs, improving yard piping, and implementing electrical upgrades. That section also states that the Contractor is to furnish all labor, equipment, tools, services, and incidentals to complete all work required by the specifications and drawings.

Section 312300 – Excavation and Fill states that fill for the embankment crest raise is located on Schunz Road, approximately three miles northeast of the project, and further states that a stockpile of soil from the original construction of the lake is available within 2.5 miles of the project along Shunz Road, with screening and separation of usable and unsuitable soils required.

That same section states that embankment and backfill materials must consist of SP, SM, SP-SM, SC, and SC-SM materials, and that soils containing deleterious or unsuitable materials will not be acceptable.

Because the current contract documents identify off-site and stockpiled material sources and define material suitability criteria for embankment construction, but do not expressly state whether dredged material from the existing lake/reservoir system may or may not be used, bidders would benefit from written clarification on whether such an approach is permissible, has been considered by the City/Engineer, or would require formal approval through addendum or substitution review.

In addition, Section 312300 states that all work will be performed without the lakes being drawn down, which may affect the feasibility, sequencing, and means and methods of any dredging-related approach.

Prime Construction Group respectfully requests written clarification on the following:

Question No. 7(a) Has the City and/or Engineer evaluated dredging of the existing lake/reservoir areas as a potential means of obtaining material for the proposed berm raise?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for

use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(b) Would the City permit bidders to propose the use of dredged on-site material for embankment construction, provided the material meets the suitability requirements of Section 312300 – Excavation and Fill?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(c) If the use of dredged on-site material is acceptable, should bidders include such work within the existing bid items, or does the City intend to issue an addendum identifying how such work would be measured and paid?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(d) If dredging is not acceptable or not contemplated for this project, please confirm that bidders are to base pricing only on the material sources and embankment construction approach expressly identified in the contract documents.

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road.

Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 7(e) If the City would consider dredging as an alternative approach, would additional geotechnical/material testing, permitting, or design review be required beyond the testing and submittals already identified in Section 312300 – Excavation and Fill?

Response: For purposes of bidding, all dredged material generated from construction of the connecting ditch, as well as any other excavated materials encountered on the project, shall be considered unsuitable for use in raising the berm at Lake B. All such dredged and/or excavated material shall be hauled and disposed of at the City's designated stockpile site, located approximately three (3) miles east on Shunz Road. Bidders shall include all costs associated with loading, hauling, and placement at the designated stockpile location in their bid.

Question No. 8 During our review of the bid documents for the above-referenced project, Prime Construction Group has identified a significant discrepancy between Attachment 1 – Schedule of Unit Pricing (XLSX bid form) and Specification Section 012000 – Price and Payment Procedures. We respectfully request written clarification from the City prior to the bid submission deadline.

Section 012000 defines twenty-four (24) separate bid items with individual measurement and payment criteria. However, Attachment 1 – Schedule of Unit Pricing contains only thirteen (13) priced line items plus five (5) Owner-defined allowances, for a total of eighteen (18) entries. The following eleven (11) bid items are defined in Section 012000 but do not appear on the Attachment 1 bid form:

- Bid Item 4 – Clearing and Grubbing (Unit)
- Bid Item 7 – Channel Construction (Lump Sum)
- Bid Item 8 – Spillway Removal and Reconstruction (Lump Sum)
- Bid Item 9 – Yard Piping (Lump Sum)
- Bid Item 10 – Flow Meter (Each)
- Bid Item 11 – Gate Valves (Each)
- Bid Item 12 – Winged Concrete Endwall (Each)
- Bid Item 13 – Type E Ditch Bottom Inlet (Each)
- Bid Item 15 – FDOT 530 RipRap (Ton)
- Bid Item 16 – Weir Modification (Lump Sum)
- Bid Item 18 – Materials Testing (Lump Sum)

Several of these missing items represent major scope elements of the Work, including Channel Construction (Bid Item 7), Spillway Removal and Reconstruction (Bid Item 8), Yard Piping (Bid Item 9), and Weir Modification (Bid Item 16). Without separate line items on the bid form,

bidders cannot provide individual unit or lump-sum pricing for these scopes as contemplated by Section 012000.

Additionally, Section 012000 §1.1.C states that work for which no separate Contract Item is provided shall be considered incidental. If the City intends for these eleven items to be priced separately, the current bid form does not accommodate that intent. Conversely, if the City intends for these scopes to be incidental to other bid items, the measurement and payment language in Section 012000 creates a conflict.

Prime Construction Group respectfully requests written clarification on the following:

Question No. 8(a) Will the City issue a revised Attachment 1 – Schedule of Unit Pricing that includes all twenty-four (24) bid items defined in Section 012000?

Response: City staff have reviewed the bid form and do not concur that all items identified in the Measurement and Payment section are reflected in Attachment 1, Schedule of Unit Pricing. During this review, one discrepancy was identified: Bid Item 24 was incorrectly shown as a duplicate of Bid Item 17. A revised Attachment 1 – Schedule of Unit Pricing has been issued with this addendum to correct this error. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(b) If a revised bid form will not be issued, should bidders treat the eleven (11) items listed above as incidental to other bid items, and if so, which bid items should absorb each scope?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(c) If the eleven (11) items are to be treated as incidental, will the City amend Section 012000 to remove the separate measurement and payment criteria for those items to eliminate the conflict?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 8(b) Does the City intend to issue an addendum addressing this discrepancy prior to the bid submission deadline?

Response: A revised Attachment 1 – Schedule of Unit Pricing has been issue. Bidders shall use the revised attachment in preparing their bids.

Question No. 9 During our review of the contract documents for the above-referenced project, Prime Construction Group, Inc. identified a discrepancy regarding

which party is responsible for engaging the independent construction/materials testing firm and bearing the related testing costs. We respectfully request written clarification from the City so bidders can properly assign responsibility and pricing for required testing work.

Section 312300 – Excavation and Fill, Paragraph 3.16, states that “The Contractor shall coordinate with the Owner who will engage the services of an established independent construction and materials testing firm” to perform testing identified in that section. That same section then lists specific testing types and testing frequencies for embankment fill, trench backfill, and general backfill.

However, Section 01 45 29 – Testing Laboratory Services, Paragraph 1.1.A.1, states that the Contractor will employ and pay for services of an independent testing laboratory to perform testing specifically indicated in the contract documents or specifications.

In addition, Section 01 45 29 – Testing Laboratory Services, Paragraph 1.6.B, states that all laboratory and field tests will be paid for by the Contractor, and that the Contractor shall furnish all necessary labor, equipment, and materials for such tests, except for the Engineer’s expenses.

Further, Section 012000 – Price and Payment Procedures, Bid Item 18 – Materials Testing, states that lump sum payment will be made for all labor, equipment, and materials provided to complete all materials testing requirements per the contract documents.

Because Section 312300 states that the Owner will engage the testing firm, while Section 01 45 29 states that the Contractor will employ and pay the testing laboratory, the specifications currently provide conflicting direction regarding responsibility for procurement and payment of the testing services.

This conflict directly affects bidder pricing for Bid Item 18 – Materials Testing, as well as pricing strategy for earthwork, trench backfill, and embankment operations that rely on required testing frequencies identified in Section 312300.

Section 312300 identifies the following testing requirements/frequencies:

- Embankment Fill:
 - Proctor and Grain Size Analyses — one test per 3,000 CY
 - Density Test — one test per 300 LF/lift

- Trench Backfill:
 - Proctor and Grain Size Analyses — one test per 300 CY
 - Density Test — one test per 200 LF/lift
- General Backfill:
 - Proctor and Grain Size Analyses — one test per 1,000 CY
 - Density Test — one test per 750 SF/lift

Prime Construction Group respectfully requests written clarification on the following:

Question No. 9(a) Which party is responsible for engaging the independent testing firm for the testing work identified in Section 312300 – the Owner or the Contractor?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 9(b) Which party is responsible for payment of the testing services identified in Section 312300?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 10(c) If the Owner will engage the testing firm, should bidders still include full pricing for Bid Item 18 – Materials Testing, or will that bid item be adjusted by addendum?

Response: **The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.**

Question No. 10(d) If the Contractor is responsible for employing and paying the testing laboratory under Section 01 45 29, does the City intend to revise or clarify Section 312300 Paragraph 3.16 to eliminate the conflict?

Response: The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.

Question No. 10(e) Please confirm whether all testing frequencies listed in Section 312300 are to be included in Bid Item 18 – Materials Testing.

Response: The Contractor shall be responsible for all materials testing associated with the project. This responsibility includes retaining, coordinating, and compensating a qualified testing laboratory, as well as performing all required testing in accordance with the contract documents. All costs associated with materials testing shall be considered incidental to the contract and included in the bid price.

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 3

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



ADDENDUM 3 (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business:	
Contact Person:	
Email Address:	
Authorized Signature:	

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ -	\$ -
2	Erosion and Sediment Control	LS	1	\$ -	\$ -
3	Dewatering	LS	1	\$ -	\$ -

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ -	\$ -
5	Embankment Fill and Reconstruction	CY	22000	\$ -	\$ -
6	Place Topsoil & Seed	SY	45,000	\$ -	\$ -
7	Channel Construction	LS	1	\$ -	\$ -
8	Spillway Removal and Reconstruction	LS	1	\$ -	\$ -
9	Yard Piping	LS	1	\$ -	\$ -
10	Flow Meter	EA	1	\$ -	\$ -
11	Gate Valves	EA	2	\$ -	\$ -
12	Winged Concrete Endwal	EA	2	\$ -	\$ -
13	Type E Ditch Bottom Inlet	EA	2	\$ -	\$ -
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ -	\$ -
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ -	\$ -
15	FDOT 530 RipRap	TN	30	\$ -	\$ -
16	Weir Modification	LS	1	\$ -	\$ -
17	Electrical & Instrumentation Complete	LS	1	\$ -	\$ -
18	Materials Testing	EA	2	\$ -	\$ -

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ -	\$ -
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LEGEND
EA - EACH

	TOTAL BASE BID: \$ -
--	----------------------

LF - LINEAR FEET

LS - LUMP SUM

SY - SQUARE YARD



CITY OF PORT ORANGE

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

ADDENDUM NO. # 4

June 17, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATIONS:

In response to Addendum #3 on the Reclaimed Water Reservoir Improvement Project, can you please confirm the unit of measure for Pay Item #18 – Materials Testing. Is the quantity of 2 *Each* correct, or is this intended to be a 1 *Lump Sum* pay item as is described in the price and payment procedures?

Response: Pay Item 18 should be a 1 Lump Sum pay item.

C. QUESTIONS AND ANSWERS:

Question No. 1 Whether the material is City-owned and available at no cost to the contractor.

Response: The City-owned material will be available to the contractor at no cost.

Question No. 2 Whether the material is suitable and available in sufficient quantity to fulfill the project backfills and embankments.

Response: The material is suitable and available in sufficient quantity for the project.

Question No. 3 Whether the contractor is responsible for loading the material.

Response: **The contractor is responsible for loading, transport, and spreading of the material.**

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 4

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



CITY OF PORT ORANGE

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

ADDENDUM NO. # 5

June 18, 2026

ITB # 26-04 RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

To All Bidders:

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

A. CHANGES TO SPECIFICATIONS:

None

B. REVISIONS/CLARIFICATIONS:

Addendum No. 3 for Attachment 1 – “Schedule of Unit Pricing” is hereby revised as follows:

Attachment 1 – Schedule of Unit Pricing is hereby deleted in its entirety and replace with Addendum No. 5 Revised Schedule of Unit of Pricing.

C. QUESTIONS AND ANSWERS:

None

**In all other respects, except as specifically stated herein, the subject ITB # 26-04
- Reclaimed water reservoir improvement project remains the same.**

END OF ADDENDUM NO. # 5

Catrina Wilson
Procurement Manager
cwilson@port-orange.org



ADDENDUM 5 (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business:

Contact Person:

Email Address:

Authorized Signature:

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ -	\$ -
2	Erosion and Sediment Control	LS	1	\$ -	\$ -
3	Dewatering	LS	1	\$ -	\$ -

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ -	\$ -
5	Embankment Fill and Reconstruction	CY	22000	\$ -	\$ -
6	Place Topsoil & Seed	SY	45,000	\$ -	\$ -
7	Channel Construction	LS	1	\$ -	\$ -
8	Spillway Removal and Reconstruction	LS	1	\$ -	\$ -
9	Yard Piping	LS	1	\$ -	\$ -
10	Flow Meter	EA	1	\$ -	\$ -
11	Gate Valves	EA	2	\$ -	\$ -
12	Winged Concrete Endwal	EA	2	\$ -	\$ -
13	Type E Ditch Bottom Inlet	EA	2	\$ -	\$ -
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ -	\$ -
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ -	\$ -
15	FDOT 530 RipRap	TN	30	\$ -	\$ -
16	Weir Modification	LS	1	\$ -	\$ -
17	Electrical & Instrumentation Complete	LS	1	\$ -	\$ -
18	Materials Testing	LS	1	\$ -	\$ -

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ -	\$ -
----	---------------------------------	----	---	------	------

LEGEND
EA - EACH

TOTAL BASE BID: \$ -

LF - LINEAR FEET

LS - LUMP SUM

SY - SQUARE YARD



NOTICE OF INTENT TO AWARD

Invitation to Bid No. and Title: ITB #26-04-CW - Reclaimed Water Reservoir Improvement Project

Bid Due Date and Time: June 24, 2026 at 2:30PM

Purchasing Agent: Catrina Wilson

Notice of Intent to Award Date and Time: July 9, 2026 at 1:30 PM

	1	2	3	4	5	6
VENDOR NAMES: <i>(from lowest to highest BID TOTAL)</i>	J.D. WEBER CONSTRUCTION	ALL STATE CIVIL CONSTRUCTION, INC.	C&B CIVIL CONSTRUCTION, INC.	MASCI GENERAL CONTRACTORS, INC.	GPS CIVIL CONSTRUCTION, INC.	PRIME CONSTRUCTION GROUP, INC.
<i>Responsive (Y/N)</i>	Y	Y	Y	Y	Y	Y
Bid	\$ 2,240,772.87	\$ 2,612,571.44	\$ 2,877,330.00	\$ 3,069,172.65	\$ 3,334,375.00	\$ 3,188,645.00
Allowances	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00
BID TOTAL	\$ 2,350,772.87	\$ 2,722,571.44	\$ 2,987,330.00	\$ 3,179,172.65	\$ 3,444,375.00	\$ 3,298,645.00

Awarded Vendor:

J.D. Weber Construction

Purchasing Agent Signature:

Department Representative Signature:

Witness Signature:




CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID ITB #26-04-CW RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT



City of Port Orange Purchasing Division
Prepared by: Catrina Wilson
Release Date: May 27, 2026

Bid Due Date & Time: June 24, 2026 @ 2:30 PM

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



Legal Notice to Bidders

ITB # 26-04-CW

RECLAIMED WATER RESERVOIR IMPROVEMENT PROJECT

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #26-04-CW Reclaimed Water Reservoir Improvement Project. Bids will be accepted in the City Clerk's office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on June 24, 2026**, which may be amended by addendum issued by the City. All untimely bids will not be considered and will be returned to the Bidder unopened. All bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. **Bids will be opened and read aloud at 2:30 PM EST in Council Chambers.**

There will be a mandatory pre-bid conference and site visit for the project at **10:00 AM EST on June 3, 2026**, at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All prospective Bidders must attend the meeting and site visit. **Only Bidders attending the Mandatory Pre-Bid Conference and Site visit will be eligible to submit a Bid.** All attendees to the Pre-Bid Conference and site visit must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and **MUST** sign in accordingly. Bidders are urged to obtain bid documents and familiarize themselves with the documents prior to the pre-bid conference.

A Bid Guarantee in the form of a Bid Bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid must be submitted with each bid. If awarded, the Bidder must also be able to obtain payment and performance bond equal to one hundred percent (100%) of project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's failure to include the bonding capacity letter with bid package may result in rejection of Bidder's submittal.

DESCRIPTION: Reclaimed Water Reservoir Lake A and Lake B improvements.

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

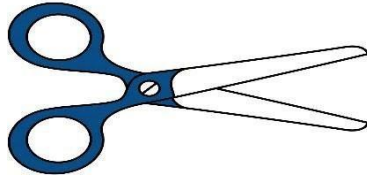
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 and at www.municode.com.

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

All questions shall be directed **in writing** to Catrina Wilson, Procurement Manager at cwilson@port-orange.gov and purchdiv@port-orange.org and reference "Questions on ITB #26-04-CW Reclaimed Water Reservoir Improvements" in the subject line. Last day for questions will be June 10, 2026, by 5:00 PM EST.

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

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



SEALED BID - DO NOT OPEN	
SEALED BID NO.:	ITB #26-04-CW
BID TITLE:	RECLAIMED RESERVOIR IMPROVEMENTS
DUE DATE/TIME:	June 24, 2026 AT 2:30 PM EST
SUBMITTED BY:	_____ (Name of Company)
BIDDER'S ADDRESS:	_____ _____
DELIVER TO:	CITY OF PORT ORANGE CITY CLERK'S OFFICE ATTN: Catrina Wilson, Procurement Manager PURCHASING DIVISION 1000 CITY CENTER CIRCLE PORT ORANGE, FL 32129
DATE/TIME RECEIVED:	_____ (To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Bidders) for Reclaimed Water Reservoir Improvements Project.

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

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO BIDDERS

Bidders desiring to provide services, as described herein shall submit sealed bids, including one (1) original and one (1) digital (flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Eastern Standard Time)

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of distribution	May 27, 2026
Mandatory pre-bid conference and site visit	June 3, 2026 @10am
Deadline for questions	June 10, 2026 by 5:00 PM
Addendum posting (if needed)	June 17, 2026
Bids due	June 24, 2026 by 2:30 PM
City Council meeting for approval of Recommendation of Award	To Be Determined

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

City of Port Orange City Clerk's Office
Attn: Catrina Wilson, Procurement Manager
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Sealed bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time. Bids shall be sealed and Bidders shall clearly indicate on the outside of their bid the following:

- Invitation to Bid (ITB) Number and Title
- Date of Opening
- Name of Bidder
- Address of Bidder

Due to the timing of mail service, the City cautions Bidders to ensure actual delivery of bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Bidders are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. The City will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone, email or fax will not be accepted.

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

PRE-BID CONFERENCE

There will be a **mandatory pre-bid conference and site visit** on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All prospective Bidders must attend the meeting and **site visit**. **Only Bidders attending the mandatory pre-bid conference**

and site visit will be eligible to submit a bid. All attendees to the **mandatory pre-bid conference and site visit** MUST sign in. The representative of each Bidder shall be an authorized employee of the Bidder and must sign in accordingly. **The site visit will immediately follow the meeting in Council Chambers.**

QUESTIONS

All questions shall reference "ITB #26-04 Reclaimed Water Reservoir Improvements Project" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Catrina Wilson, Procurement Manager
1000 City Center Circle
Port Orange, FL 32129
cwilson@port-orange.org
purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the bid due date. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. The Bidder should verify prior to submitting a bid that all addenda have been received and reviewed. All addenda will be published on the City Purchasing web page at www.port-orange.org/bids.aspx and the Euna OpenBids (Formally DemandStar) website at www.demandstar.com.

The City of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Bidder or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Bidder or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS

It is the Bidder's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS

Bidders shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active".

Bidders must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this ITB on the provided *Professional References* form (Form 7.8). Failure to provide verifiable references may cause the Bidder to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING

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

SCHEDULE OF UNIT PRICING

Schedule of Unit Pricing is to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the Schedule of Unit Pricing as directed and without modification will negatively affect the evaluation of your bid. If the City has a need to revise the Schedule of Unit Pricing prior to the bid submittal deadline, it will do so in a published addendum. If the City does revise the Schedule of Unit Pricing, bidders **must** complete and return the City issued revised version of the Schedule of Unit Pricing. If bidder does NOT complete and return the City issued revised version of the Schedule of Unit Pricing their bid submittal will be deemed non-responsive.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the ITB specifications, the Bidder must indicate those exceptions as stated on the *Bidder's Acknowledgement* (Form 7.2).

BID SUBMISSION AND WITHDRAWAL

Unless otherwise specified, Bidder shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Bidders. Upon opening, bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS

Correction of inadvertently erroneous bids shall be permitted up to the time of ITB opening. Bidders shall not be allowed to modify their bids after the opening time and date.

WITHDRAWAL OF BIDS

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

OPENING OF BIDS

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. The City bears no responsibility for the premature opening of a bid not properly addressed and identified.

LITIGATION HISTORY

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

DEBARMENT HISTORY

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

REJECTION OF BIDS

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

BIDS MAY BE REJECTED AND/OR BIDDER(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

OWNERSHIP OF DOCUMENTS

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

REQUIRED DOCUMENTS FOR AWARDED BIDDER

The awarded Bidder shall return all the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract.

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF WORK

SCOPE OF WORK:

The City currently stores treated reclaimed water in Lake A and B. The work consists of furnishing all labor, equipment and materials for the following, but not limited to: construction of a ditch to connect Lake A to Lake B in lieu of the existing interconnecting piping; raising the berm height of Lake B by one foot and modifying its three emergency overflow weirs to provide additional storage; improving the yard piping to enhance operational flexibility; and implementing electrical upgrades to the intake pump station and the effluent pump station as shown in the plans.

DRAWINGS, SPECIFICATIONS AND REQUIREMENTS:

Please see Attachment 2 and 3 published on the City's webpage @ <https://www.port-orange.org/bids.aspx> and DemandStar via their website @ www.demandstar.com.

[Remainder of this page left intentionally blank]

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerers who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Bidders/Proposers in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on Euna OpenBids (formally DemandStar), that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective Bidders requesting pricing for a specified Good or Service which has been advertised for bid in a newspaper.

24. **Invitation to Negotiate (ITN)** means a formal request to prospective proposers requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the “driver of change” and seeks alternatives/options.
27. **Lowest Responsible Bid** means the responsive bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting lowest responsible bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employ mentor practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City’s standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder’s authority to deliver and invoice the City for Goods or Services specified, and the City’s commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective proposers requesting qualifications of the proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective proposers requesting statements of qualifications pursuant to Florida Statute 287.055 “Consultant’s Competitive Negotiation Act” which has been advertised for Statement in a newspaper.

- 44. **Respondent** means an entity that has (or will, i.e. “prospective respondents”) submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
- 45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
- 46. **Responsible (Bidder)** is a Bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
- 47. **Responsive (Bidder)** is a Bidder that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
- 48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
- 49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Bidder must execute in terms of delivering specific commodities or in performance of contractual services.
- 50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
- 51. **Solicitation** means a formal request, as applicable, for prospective Bidders/Proposers to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
- 52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
- 53. **Stakeholder** means an individual, who is not likely to become a supplier, who has an interest in the commodities/contractual services needed.
- 54. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder/Proposer’s obligations under the Contract.
- 55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
- 56. **Unbalanced Bid** means a bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

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SECTION 5 – GENERAL TERMS AND CONDITIONS

These terms and conditions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. These General Terms and Conditions apply to all advertised Solicitations; however, said terms and conditions may be superseded, in whole or in part, by Section 6, Special Requirements/Instructions.

1. **ACCEPTANCE BY CITY**

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by the Bidder. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this solicitation shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

2. **ADDENDA**

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders must acknowledge all addenda by completing Form 7.3 *Addendum and Change Order Procedure Acknowledgement* and include it in the returned response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the response. It is the responsibility of the Bidder to ensure all addenda have been received and reviewed prior to submitting a bid. All addenda shall be posted by the City on DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at <https://www.port-orange.org/bids.aspx>. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the solicitation response due date. Bidders should not rely on any representations, statements or explanations other than those made in this solicitation or in any addendum to the solicitation. Where there appears to be a conflict between the solicitation and any addenda issued, the last addendum issued shall prevail.

3. **ADDITIONAL GOODS**

Products, materials and goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

By submitting a response to a formal solicitation, the Bidder affirms that this response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a response for the same materials, supplies, or equipment, and that the response is in all respects fair, and without collusion or fraud. Additionally, Bidder agrees to abide by all conditions of this solicitation and certifies that he/she is authorized to sign the response for the bidding company/firm. In submitting a response to the City of Port Orange, the Bidder offers and agrees that if the response is accepted, the Bidder shall convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Bidder.

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the contract, the Bidder agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

The successful Bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release the Bidder from all contractual obligations.

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA**

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

8. **AWARDS**

Recommendation for award will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Manual. The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Bidders; to reject any and all bids, or to waive any informality or technicality in bids received as deemed to be in the best interest of the City. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, bid or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT**

When a bid received has been determined to be satisfactory, a contract will be awarded, or Purchase Order issued to the lowest responsive and responsible Bidder within the time designated in the contract documents. The Bidder(s) to whom the award is made shall execute the contract(s) and return it, together with the properly executed bonds and insurance certificates to the City within the time specified.

10. **BID RETURNS**

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

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, statements, or replies, awarding contracts, reserving rights of further negotiation, or modifying or

amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

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

12. **BID TABULATION**

Bidders who wish to receive a copy of the bid tabulation may obtain it via Euna OpenBids (formally DemandStar) at www.demandstar.com or on the City Purchasing web page at www.port-orange.org/bids.aspx.

13. **BIDDER'S PRODUCT OR SERVICES**

The Bidder's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the Bidder warrants that it has a clear title to the product being delivered.

- a. If the Bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder.
- c. In furnishing the service or product to the City, the Bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, proposal or quote.

14. **BONDS**

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

Depending on the amount and/or nature of the work to be performed, a Payment and Performance Bond may be requested and shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the awarded Bidder's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the awarded Bidder the recording information for the bond to evidence that the Bidder has met the requirements of Florida law. The City will bill the cost of recording to the awarded Bidder. Unsuccessful respondents are entitled to the return of their bid bond. A successful respondent shall forfeit any surety required by the Purchasing

Manager upon failure of the respondent to enter into a contract within the time specified after the award of bid.

15. **CERTIFICATE OF INSURANCE**

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

16. **CHANGE ORDERS**

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

17. **CHANGE ORDER REQUEST NOTIFICATION**

The awarded Bidder is responsible for giving the City of Port Orange, prior to the contract expiration date, at least forty-five (45) calendar days of advance notice for any anticipated changes in price greater than \$25,000, and any changes in time and/or scope of the awarded contract. The Bidder shall not continue to provide services past the contract expiration date unless approved by a written Change Order Notice from the City.

18. **CLEAN UP**

Upon completion of the delivery of materials, the Bidder shall restore any/all public and private property which may have been damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Bidder shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged. If sod is used it shall match the sod present on the effected property. Bidder shall make all repairs and restorations at his/her expense.

19. **CONDUCT OF BIDDERS**

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

20. **CONE OF SILENCE**

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

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly noticed committee meetings;

- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

21. **CONFLICT OF INTEREST**

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

22. **CONFLICT OF INSTRUCTIONS**

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

23. **CONTRACT OBLIGATION**

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

24. **CONTRACT RENEWALS**

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

25. **COPYRIGHT AND PATENT RIGHTS**

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

26. **COST INCURRED BY BIDDER**

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

27. **DAMAGE**

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the City's representative and the Bidder. If the Bidder is found to be at fault, all repairs, restitution, or reimbursements to the City must be completed within one week of discovery.

28. **DEBARMENT HISTORY**

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

29. **DEFAULT PROVISIONS**

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

30. **DELIVERY OF GOODS/SERVICES**

All materials are to be delivered F.O.B.; City of Port Orange designated facility. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The Bidder shall clearly state in the response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the Bidder in default. Upon approval of a contract, the Bidder is obligated to deliver the goods to the destination specified in the solicitation or the purchase order and bears the risk of loss until delivery. If this solicitation or purchase order does not contain delivery instructions, Bidder shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this competitive solicitation shall prevail. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the Bidder, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the Bidder to meet the contract delivery dates will be cause for removal of the Bidder from the City's list of eligible Bidders/Proposers as determined by the Purchasing Division.

31. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER**

In determining the lowest and best responsible Bidder, in addition to price, there will be considered the following:

- a. The ability, capacity and skill of the Bidder to perform the contract.
- b. Whether the Bidder can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

32. **DISCLOSURE OF CONFLICTS**

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

33. **DISQUALIFICATION OF BIDDER**

The Purchasing Manager shall maintain a current listing of qualified Bidders. The Purchasing Manager may, from time to time, remove any Bidder's name from the list of qualified Bidders. Normally the removal of a Bidder from the Bidder list is done after non-response from that Bidder for three (3) consecutive

solicitations. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all responses may be rejected if the City believes that collusion exists among the Bidders. Responses in which the prices are obviously unbalanced may be rejected. If multiple responses are submitted by a Bidder and after the responses are opened one of the responses is withdrawn, the result will be that all of the responses submitted by that Bidder will be withdrawn; however, nothing herein prohibits a Bidder from submitting multiple responses for different products or services.

34. **EVALUATION**

Evaluation shall be used as a determinant as to which response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all solicitation requirements, delivery and needs of the using department are considerations in evaluating responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any Bidder/Proposer, at any time, to clarify, verify or request information with regard to any response.

35. **EXCEPTIONS TO SPECIFICATIONS**

For purposes of evaluation, the Bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Bidder that are required to be signed by the City. If exceptions are not stated by the Bidder, in his/her bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder on Form 7.2 *Bidder's Acknowledgement* included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

36. **E-VERIFY**

Bidders shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Bidder during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Bidders shall complete **Form 7.12 E-Verify Affidavit** and include it in the returned bid package. Failure to include the affidavit may result in rejection of the bid.

37. **FACILITIES**

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

38. **FAILURE TO RESPOND**

If the Bidder elects not to bid, the City requests that Bidder return the enclosed **Form 7.15 No Bid Response** by the bid due date and state the reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting Form **7.15 No Bid Response**, three (3) times, shall result in the Bidder's name being removed from the City's mailing list.

39. **FINANCIAL STABILITY**

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

40. **FORCE MAJEURE**

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

41. **FOREIGN COUNTRIES OF CONCERN**

A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas

Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

42. **GOVERNING FORMS**

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

43. **GOVERNING LAW**

Bidders shall comply with all applicable federal, state and local laws and regulations. All responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than \$35,000.00 must have a signed, notarized *Sworn Statement of Public Entity Crimes* (Form 7.5) contained herein to comply with Section 287.133(3)(a), Florida Statutes. Also required is the *Drug- Free Preference Statement* (Form 7.4) also contained herein to comply with Section 287.087, Florida Statutes.

44. **GRANT FUNDING**

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the Bidder understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

45. **HIPAA COMPLIANCE**

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

46. **HUMAN TRAFFICKING**

When a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in this section. For purposes of this subsection, the term "governmental entity" has the same meaning as in s. [287.138](#)(1).

47. **IDENTICAL TIE BIDS**

If there are tie bids, meaning everything except the information relating to the submitting firm is the same, the following methods shall be used in the order below to break the tie:

- The Bidder that has a Business Tax Receipt (BTR) within Port Orange City limits (confirmed through Sunbiz).
- The commodity was manufactured in the State of Florida.
- Florida business as confirmed thru SunBiz.org.
- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie Bidder who has or had a contract with the City and performance is or was not satisfactory, the other tied Bidder is awarded.
- Drug free workplace policy in place.

48. **INDEMNIFICATION/HOLD HARMLESS**

- (a) Bidder shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Bidder, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the contract by the Bidder, his/its agents, servants and employees. Bidder shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.
- (b) To the fullest extent permitted by law, in addition to the express duty to indemnify the City when there is any causal connection between Bidder's work and any injury, loss, damage, death or property damage, Bidder expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Bidder hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Bidder as long as the claims made could be causally connected to Bidder as reasonable determined by the City.

49. **INDEPENDENT CONTRACTOR**

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

50. **INSPECTIONS AND TESTING**

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

51. **INSURANCE CANCELLATION**

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

52. **INSURANCE REQUIREMENTS**

Bidder shall maintain insurance, as required herein, during the life of this contract. Bidder shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Bidder shall be primary and non-contributory. All insurance coverages of the Bidder shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Bidder may use leased employees if the Bidder ensures that all workers who access the jobsite are employees covered by the

employee leasing company, and no non-employees are permitted to access the jobsite. Any Bidder using a leased employee shall complete the City's *Leased Employee Affidavit* contained herein. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Bidder shall not commence work under this contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, non-renewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days of prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages. Bidder shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Bidder is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Bidder to ensure the subcontractors maintain the required coverage, shall not relieve the Bidder of any contractual responsibility, obligation or liability. The City reserves the right to increase the insurance coverage requirement as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this. Should at any time the Bidder or subcontractors not maintain the insurance coverages required herein, the City may terminate the contract or at its sole discretion shall be authorized to purchase such coverages and charge the Bidder for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the contract.

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Standard Insurance Requirements									
Required	Insurance	Standards	Additional Requirements						
☒	<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 Exhibit Form.	<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></table> Contracts over \$20 million to be determined by the City	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	- 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								
☒	Comprehensive General Liability (including completed operations and contractual liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage: \$1,000,000 each occurrence \$1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.						
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	<u>Limits:</u> Auto Liability Bodily 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 required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.						
☐	Installation Floater (IT)	<u>Limits:</u> Coverage – To Be Determined							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Professional Liability/Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage – To Be Determined							
☐	Payment and Performance Bond required	<u>Limits:</u> Coverage – equal to amount of contract							
	City Manager waives Payment and Performance Bond for work under \$200,000 unless otherwise required by Department Director.								
	Unless otherwise required by law, City Manager waives insurance for FOB goods only purchases.								

53. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. The awarded firm is encouraged to accept payment via ACH. This can be accommodated after the contract is fully executed.

54. **IRREVOCABILITY OF RESPONSES**

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

55. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

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

56. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

57. **LICENSES, PERMITS AND TAXES**

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

58. **LITERATURE (if applicable):**

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

59. **LOCAL PREFERENCE**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

60. **MAINTENANCE**

If maintenance is required for equipment purchased as a result of this solicitation, it is preferred that such maintenance be available to the City of Port Orange by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Schedule of Unit Pricing form for the solicitation. If the City of Port Orange opts to include maintenance, it shall be so stated in the

purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and shall be priced accordingly.

61. **NAME BRANDS**

Specifications may reference name brands and model numbers. It is not the intent of the City of Port Orange to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with the Bidder, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.

62. **NON-DISCRIMINATION**

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

63. **NON-EXCLUSIVITY OF CONTRACT**

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

64. **NON-PERFORMANCE**

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

65. **NOTICE TO CONTRACTOR**

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

66. **OPTIONAL CONTRACT USAGE**

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

67. **OTHER AGENCIES**

(a) All Bidders awarded contracts from this bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.

(b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Bidder(s).

68. **PATENTS/COPYRIGHTS**

The successful Bidder agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

69. **PRE-BID CONFERENCE**

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the solicitation legal advertisement and solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Only Bidders attending a mandatory pre-bid conference will be eligible to submit a response. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly.

70. **PREPARATION OF RESPONSES**

In preparing responses, the Schedule of Unit Pricing form, the Bid Bond form (when a Bid Bond is required as bid security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti-Collusion Statement, and Drug Free Preference Statement must be properly executed in ink. The prescribed Schedule of Unit Prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the total bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the solicitation. The Bidder shall sign his/her name and give his/her business address in the spaces provided therefore. If the submittal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

71. **POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES**

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

72. **PRICING**

Responses may not be withdrawn before the expiration of one-hundred-twenty (120) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after one-hundred-twenty (120) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Schedule of Unit Pricing form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting bids/proposals based on a lump sum basis, Bidders shall be required to submit a price for each line item listed on the Schedule of Unit Pricing in order to be considered for award.

73. **PRODUCTS/ESTIMATES**

Items included on the bid form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and estimated quantities provided on the Schedule of Unit Pricing are for bidding purposes only and are not guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

74. **PROPRIETARY INFORMATION**

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

75. **PROTECTION**

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the contractor during the term of contract, and

the contractor shall be held responsible for any damage to the property occurring by reason of his/her operation on the property.

76. **PUBLIC ENTITY CRIMES**

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

77. **PUBLIC RECORDS COMPLIANCE**

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

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

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

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

78. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Bidders will not be able to procure a copy of their competitors' bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Bidder, or where a Bidder answers questions. In other words, neither Bidders, nor the public will be permitted to sit

in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Bidders, but the new law limits public attendance to portions of such meetings.

79. **PURCHASE ORDER AND DELIVERY**

The successful Bidder shall not deliver products or provide services without a City of Port Orange purchase order, signed by an authorized agent of the City of Port Orange. The fastest, most reasonable delivery time shall be indicated by the Bidder. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City of Port Orange without prejudice to other remedies provided by law. Where delivery times are critical, the City of Port Orange reserves the right to award accordingly.

80. **QUALITY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

81. **QUESTIONS/INTERPRETATIONS**

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

82. **RECORDS/AUDIT**

- (a) The contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the contractor involving transactions related to this contract.
- (b) The contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.
- (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

83. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

84. **REJECTING OF RESPONSES/RE-BIDDING**

The City reserves the right to accept or reject any or all responses or parts of responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the

contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all responses. If the lowest and best response exceeds the budgeted amount and the City Council does not make additional funds available, the Purchasing Division with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

85. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final solicitation selection, Bidders may be required to submit additional information which the City may deem necessary to further evaluate the Bidder's qualifications to perform under the terms of the solicitation and subsequent contract.

86. **REVIEW OF RESPONSES/SUBMISSIONS**

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

87. **RIGHT OF WITHDRAWAL**

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

88. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

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

89. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The Bidder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

90. **SAMPLES**

Samples, when requested, must be furnished at, or before the bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Bidder's request, be returned within thirty (30) days after bid award at the Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

91. **SCRUTINIZED COMPANIES LIST**

The contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this contract for cause if the contractor is found to have submitted a false certification or if the contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The contractor shall provide a completed *Scrutinized Companies Certification* (**Form 7.10**), certifying the contractor's compliance with this section, prior to the execution of this contract.

92. **SEPARATION AND DISTRUBUTION**

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

93. **SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these

requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

94. **SIGNATURE REQUIRED**

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

95. **SIGNED RESPONSE CONSIDERED AN OFFER**

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

96. **SILENCE OF SPECIFICATIONS**

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

97. **SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS**

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

98. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Bidders shall use the solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder in ink. Responses shall be submitted by mail or hand delivery only. No response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City Clerk, City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 PM (Eastern Standard Time) on the date indicated in the solicitation documents or an addendum issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the Bidder and will not be opened. Bids (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/ package shall be clearly marked on the outside to include the bid project name, bid number, name and address of the Bidder.

99. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Bidder shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such

matters and should provide copies of documentation that evidence such qualifications with the response to the solicitation; and, that the Bidder shall provide follow-up evidence that the Bidder maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Bidder/responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the solicitation. Information concerning certification with the Secretary of State may be obtained at <https://dos.fl.gov/sunbiz/>. Contract documents shall be executed by the entity's duly authorized officer as evidenced by entity records.

100. **SUBCONTRACTING**

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

101. **SUPPLEMENTAL MATERIALS**

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Bidder wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

102. **TAXES**

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

103. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time-period, the term will be given in the bid specifications.

104. **TERMINATION**

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

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

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

105. **TITLE TRANSFER**
Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The contractor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the purchase order as a "Deliver To:" address.
106. **UNBALANCED BID**
A mathematically unbalanced bid is when a Bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced bids will be rejected if the prices are deemed materially unbalanced.
107. **USE OF SOLICITATION FORMS**
The Bidder shall complete the appropriate solicitation form(s) included in the solicitation. All blanks on the solicitation forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the solicitation forms. Failure to fully complete the appropriate solicitation forms may result in disqualification of the response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional solicitation form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or entity must be that of an officer, partner or a sole proprietor of the entity making the response. The original response, and each copy submitted shall contain an original signature on the *Bidder's Acknowledgement Form* contained in each solicitation.
108. **VARIANCES**
For purposes of response evaluation, Bidders must indicate any variances, no matter how slight, contained in the response. No variations or exceptions by a Bidder will be considered or deemed a part of the response submitted unless such variances or exceptions are listed in the response and referenced in the space provided on the response pages. If variances are not stated, or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a response, the City does not necessarily accept any variances contained in the response. All variances submitted are subject to review and approval by the City. If any response contains material variances that, in the City's sole opinion, make that response conditional in nature, the City reserves the right to reject the response or part of the response that is declared, by the City, as conditional.
109. **WAIVER OF IRREGULARITIES**
The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive responses will be considered. However, the City reserves the right to waive formalities or informalities in responses, to reject, with or without cause, any or all responses or portions of responses, or to interview or not interview individual Bidders, and to accept any responses or portions of responses deemed to be in the best interest of the City. The City Council shall grant the City Manager the ability to waive any and all non-substantial irregularities in any and all formal solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)
110. **WARRANTIES**
Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the response. Bidders may not limit or exclude any implied warranties. The Bidder warrants that products sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of Port Orange may return the product for correction or replacement at the Bidder's expense. If the Bidder fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder's expense.

SECTION 6 – SPECIAL REQUIREMENTS/INSTRUCTIONS

In the event of a conflict between the terms and conditions of this Section 6, Special Requirements/Instructions and Section 5, General Terms and Conditions, the terms and conditions of this Section 6, Special Requirements/Instructions shall control.

PERIOD OF OFFER VALIDITY:

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

AWARD RECOMMENDATION:

It is the intent of the City to award a contract to the lowest responsive and responsible Bidder as outlined in Section 2 and (Attachment 1) Schedule of Unit Pricing.

CONTRACT TERM:

Three hundred ninety-five (395) days from receipt of Notice to Proceed from the City for substantial completion.

ELIGIBILITY OF BIDDER:

To be eligible to respond to this ITB, the Bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal by completing Form 7.7 Statement of Bidder's Qualifications in its entirety.

PROOF OF E-VERIFY REGISTRATION

Bidders who do not include proof of E-Verify registration with Form 7.12 City of Port Orange Contractor E-Verify Affidavit may be deemed non-responsive. Bidder must include printed pages from the E-Verify website showing company name and E-Verify registration number (My Company Profile). Bidder's failure to include Form 7.12 and proof of registration with their bid submittal may result in rejection of Bidder's submittal.

LICENSES AND PERMITS

Contractor is responsible for all applicable local and state licenses, permits and fees.

PAYMENT & PERFORMANCE BOND

If awarded, the Bidder must be able to obtain a payment and performance bond from a surety company licensed in Florida and must submit proof of their present bonding capacity with their bid submittal package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's bonding capacity must be equal to or greater than 100% of the total amount bid. Bidders who do not include their present bonding capacity letter in their submittal package may be deemed non-responsive.

Upon award, the successful Bidder will be required to furnish on the City's form, a sample of which is included herein, and pay for a Payment and Performance Bond equal to one hundred percent (100%) of the contract amount to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the awarded Bidder the recording information for the bond to evidence that the Bidder has met the requirement of Florida law. The City will bill the cost of recording to the awarded Bidder.

BID BONDS:

The Bidder must submit with their bid package a certified check or bank draft, payable to the City of Port Orange, FL or a satisfactory bid bond executed by the Bidder and an acceptable surety in the amount equal to (5%) of the total amount of the bid. If submitting a bid bond in lieu of a certified check or bank draft, the original bid bond must be included with bid submittal. If submitting a bid bond in lieu of a certified check or bank draft, Bidders who do not include their original bid bond with their submittal may be deemed non-responsive.

NOTICE:

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

SAFETY:

The awarded Bidder will comply with all applicable OSHA, State of Florida Safety Regulations and comply with all construction safety requirements of local authorities having jurisdiction. The awarded Bidder shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

REPAIR OF DAMAGES:

It is the responsibility of the awarded Bidder to repair any damages incurred in the area that are directly related to the project. When damages occur, the City of Port Orange Representative is to be notified and shall inspect the repairs upon completion.

[Remainder of page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ___ Form 7.2 – Bidder’s Acknowledgement
- ___ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ___ Form 7.4 – Drug Free Preference Statement
- ___ Form 7.5 – Public Entity Crimes Statement
- ___ Form 7.6 – Anti-Collusion
- ___ Form 7.7 – Statement of Bidder’s Qualifications
- ___ Form 7.8 – Professional References for Previous Experience
- ___ Form 7.9 – List of Subcontractors
- ___ Form 7.10 – Scrutinized Companies Certification
- ___ Form 7.11 – Local Business Affidavit of Eligibility
- ___ Form 7.12 – E-Verify Affidavit
- ___ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ___ Form 7.14 – Affidavit of Compliance With F.S. 287.138
- ___ Form 7.15 – No Submittal Response
- ___ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
- ___ (Attachment 1) – Schedule of Unit Pricing
- ___ **Current Bonding Capacity Letter (as outlined in Section 6)**
- ___ Copy of all currently held Licenses (Contractor, Sunbiz, Sam.gov, etc.)
- ___ Current Tax Receipt of Bidder’s municipality
- ___ **Original Bid Bond** or certified check or bank draft (as outlined in Section 6)
- ___ Submission of one (1) original marked “ORIGINAL” and one (1) digital (flash drive) version in PDF format

BY: _____

Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER’S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

Name of Business

Mailing Address

Authorized Signature

City, State & Zip Code

Printed Name and Title

Telephone Number

Federal Identification No.

E-mail Address

STATE OF: _____ COUNTY OF: _____

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

_____ day of _____, 2026, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

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

_____ day of _____, 2026, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2026, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

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

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

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: _____
- B. Permanent main office address: _____
- C. Date organized: _____
- D. If a corporation, where incorporated: _____
- E. How many years have you been engaged in the business under your present firm or trade name? _____
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: _____
- H. Have you ever failed to complete any work awarded to you? If so, where and why? _____
- I. Have you ever defaulted on a contract? If so, where and why? _____
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ _____
- M. Give bank name, contact name and phone number: _____

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

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

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
2. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
3. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf

(Print Name and Title)

of _____ ("Company"), certify that _____

(Company Name)

(Company Name)

does not: 1. Participate in a boycott of Israel; and

2. Is not on the Scrutinized Companies with Boycott Israel List; and

3. Is not on the Scrutinized Companies with Activities in Sudan List; and

4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and

5. Has not engaged in business operations in Syria.

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

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

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

COMPANY NAME

SIGNATURE

PRINT NAME

TITLE

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): _____

Business Name: _____ Contact Person/Title: _____

Mailing Address: _____ City, State, Zip: _____

Phone Number: _____ Email address: _____

Physical Presence of Business: ☐ Headquarters ☐ Principal Place of Business

Within Legal Boundaries: ☐ City of Port Orange ☐ Volusia County ☐ State of Florida

FEIN (Federal Employer Identification Number): _____

Business Structure: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

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

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

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

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

Print or Type Name, Title

Signature of Affiant

Federal Employer ID Number (FEIN)

E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2026, by _____ and who:

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

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

This document to be completed and returned with your Submittal

**FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Bid Number or Project Name

Name and Title of Authorized Representative

Signature

Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

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

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

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

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

Date: _____, 20____ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2026, by _____ and who:

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

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

(seal)

My commission expires: _____

This document must be completed and returned with your Submittal

FORM 7.15 – NO BID RESPONSE

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

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

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

Solicitation: ITB 26-04 Reclaimed Reservoir Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a “no response”.

- ☐ Specifications “too tight” or geared toward on brand or manufacturer (please explain below)
- ☐ Insufficient time to respond
- ☐ Specifications unclear (please explain below)
- ☐ We do not offer this product/service or an equivalent
- ☐ Our product schedule does not permit us to perform within stated timeline for the project
- ☐ Unable to meet specifications
- ☐ Unable to meet bond requirements
- ☐ Unable to hold prices firm throughout the term of the contract period
- ☐ Unable to meet insurance requirements
- ☐ Other: _____

Print Name: _____

Signature: _____ Date: _____

Additional Information:

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

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

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

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official

Name & Title of Contractor's Authorized Official

Date: _____

This document must be completed and returned with your Submittal

(ATTACHMENT 1) – SCHEDULE OF UNIT PRICING

See Attachment 1 for Schedule of Unit Pricing

BID BOND**BID BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name/Bid No.:

Project Address:

Legal Description:

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:

A.M. Best No.: _____ NAIC No.: _____

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

END OF BID BOND

This document must be completed and returned with your Submittal

PAYMENT & PERFORMANCE BOND (for informational purposes only)

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: _____

Principal Business Address: _____

Contact Person: _____

Phone Number: _____

SURETY:

Address: _____

Contact Person: _____

Phone Number: _____

OWNER:

City of Port Orange, Florida, a chartered municipal corporation

1000 City Center Circle

Port Orange, Florida 32129-4144

Contact Person: City Manager

Phone Number: (386) 506-5501

Amount: _____ **City Project Number:** _____

Description of Work: _____

Project Location: _____

Legal Description: _____

Front Page

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

Bond No. _____

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

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

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

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain _____ having an effective date of _____, 20__, entered into by and between the Principal and the City, for _____, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

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

Attest:

(Principal)

(As to Corporate Principal) Secretary

By: _____
Curtis Long, 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.

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

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

OR

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

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

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

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

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

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

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

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange. Please note, the City of Port Orange does

not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of _____

County of _____

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

WITNESS:

By: _____

Name: _____

CONTRACTOR:

Company: _____

By: _____

Name/Title: _____

Sworn to/Affirmed and subscribed before me this _____ day of _____, 20____, by _____, who is personally known to me or who produced _____ as identification.

NOTARY PUBLIC – STATE OF

Type or Print Name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

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

(SECTION 787.06, FLORIDA STATUTES)

[illegible]

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

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

Further Affiant sayeth not.

Date: _____, 20____

Signed: _____

Print Name: _____

Title: _____

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

(Notary Seal)

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

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

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and _____ ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

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

_____.

ARTICLE 2—THE PROJECT

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

_____.

ARTICLE 3—ENGINEER

- 3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, _____, P.E. ("Engineer") of _____, and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*

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

- 4.02 *Contract Times: Dates*

A. Deleted in its entirety.

- 4.03 *Contract Times: Days*

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

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.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

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 __, 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 83, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
7. Addendum No. __ (pages __ to __, inclusive).
8. Addendum No. __ (pages __ to __, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (page __, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages __ to __, inclusive).
 - c. Exhibit No. 3 Composite Exhibit No. 3 City's _____ (pages __ to __, not attached, on file with office of the City Clerk).
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

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

8.03 *Standard General Conditions*

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

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

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

Contractor:

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

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

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Phone: _____

Email: _____

License No.: _____

State: _____

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Scott Stiltner

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

Robin L. Fenwick, MMC

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500



(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04-CW

Reclaimed Water Reservoir Improvements

Name of Business:

Contact Person:

Email Address:

Authorized Signature:

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ -	\$ -
2	Erosion and Sediment Control	LS	1	\$ -	\$ -
3	Dewatering	LS	1	\$ -	\$ -

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ -	\$ -
5	Embankment Fill and Reconstruction	CY	22000	\$ -	\$ -
6	Place Topsoil & Seed	SY	45,000	\$ -	\$ -
7	Channel Construction	LS	1	\$ -	\$ -
8	Spillway Removal and Reconstruction	LS	1	\$ -	\$ -
9	Yard Piping	LS	1	\$ -	\$ -
10	Flow Meter	EA	1	\$ -	\$ -
11	Gate Valves	EA	2	\$ -	\$ -
12	Winged Concrete Endwal	EA	2	\$ -	\$ -
13	Type E Ditch Bottom Inlet	EA	2	\$ -	\$ -
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ -	\$ -
14B	19-Inch by 30-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ -	\$ -
15	FDOT 530 RipRap	TN	30	\$ -	\$ -
16	Weir Modification	LS	1	\$ -	\$ -
17	Electrical & Instrumentation Complete	LS	1	\$ -	\$ -
18	Materials Testing	EA	2	\$ -	\$ -

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

17	As-Built Survey/Record Drawings	LS	1	\$ -	\$ -
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LEGEND

EA - EACH

LF - LINEAR FEET

LS - LUMP SUM

TOTAL BASE BID: \$ -

SY - SQUARE YARD

EJCDC General Conditions

Consisting of 83 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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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.”
34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

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

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

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

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

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

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- 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 the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

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

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

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
5. If Contractor submits a schedule indicating an intention to achieve completion of the 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

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- 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. Abnormal weather conditions not anticipated or customary in Volusia County;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:
 - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. Deleted in its entirety.
 - 3. Adjustments of Contract Times are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. Deleted in its entirety.

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

- 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 stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety.
- F. Failure of Owner to demand such certificates or other evidence of the Contractor’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.

- 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. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

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

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 Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.01 Contractor’s Means and Methods of Construction

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

7.02 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner’s written rules and regulations regarding jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

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 fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .
- B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.
- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

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.

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 ENTIRETY

12.01 *Claims* - Deleted in its entirety.

- A. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
 - 4. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
- E. Deleted in its entirety.
- F. Deleted in its entirety.
- G. Deleted in its entirety.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

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surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants,

purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

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

- I. 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.

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement
 - ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
 - ☒ Form 7.4 – Drug Free Preference Statement
 - ☒ Form 7.5 – Public Entity Crimes Statement
 - ☒ Form 7.6 – Anti-Collusion
 - ☒ Form 7.7 – Statement of Bidder's Qualifications
 - ☒ Form 7.8 – Professional References for Previous Experience
 - ☒ Form 7.9 – List of Subcontractors
 - ☒ Form 7.10 – Scrutinized Companies Certification
 - ☒ Form 7.11 – Local Business Affidavit of Eligibility
 - ☒ Form 7.12 – E-Verify Affidavit
 - ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
 - ☒ Form 7.14 – Affidavit of Compliance With F.S. 287.138
 - ☒ N/A Form 7.15 – No Submittal Response
 - ☒ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
 - ☒ (Attachment 1) – Schedule of Unit Pricing
 - ☒ **Current Bonding Capacity Letter (as outlined in Section 6)**
 - ☒ Copy of all currently held Licenses (Contractor, Sunbiz, Sam.gov, etc.)
 - ☒ Current Tax Receipt of Bidder's municipality
 - ☒ **Original Bid Bond** or certified check or bank draft (as outlined in Section 6)
 - ☒ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format
- BY: J.O. Weber Construction Co.
Name of Business
- [Signature]
Authorized Signature
- 06/24/2026
Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

J.D. Weber Construction Co.

Name of Business

150 Business Center Dr.

Mailing Address

Ormond Beach, FL 32174

City, State & Zip Code

(386) 671-2727

Telephone Number

Joejr@JDWeberConstruction.com

E-mail Address

Authorized Signature

Joseph D. Weber - President

Printed Name and Title

54-2180252

Federal Identification No.

STATE OF: FL COUNTY OF: Volusia

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

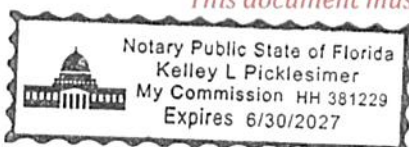
23rd day of June, 2026, by Joseph D Weber and who:

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

Kelley Picklesimer Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal



FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 1 Date: 05/29/26

Addendum# 3 Date: 06/17/26

Addendum# 2 Date: 06/01/26

Addendum# 4 Date: 06/17/26

addendum # 5 Date: 06/18/26

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

J.D. Weber Construction Co.
Name of Business

[Signature]
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

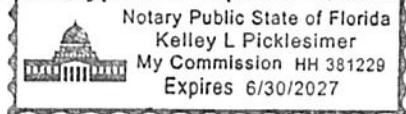
STATE OF: FL COUNTY OF: Volusia

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

23rd day of June, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

J.D. Weber Construction Co.

Name of Business

[Signature]
Authorized Signature

Joseph D. Weber - President

Printed Name and Title

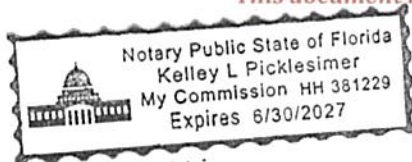
STATE OF: FL COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

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

This document must be completed and returned with your Submittal



FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

Before me, the undersigned Authority, personally appeared affiant Joseph D. Weber, who, being by me first duly sworn, made the following statement:

1. The business address of 150 Business Center Dr (name of Offeror or business) is J D Weber Construction Co.
2. My relationship to J D Weber Construction Co (name of Offeror or business) is President
Joseph D. Weber (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____.~~ A copy of the order of the Division Administrative Hearing is attached.
(Draw a line through paragraph 7 if paragraph 6 above applies)

J.D. Weber Construction Co.
Name of Business

STATE OF: FL

COUNTY OF: Volusia

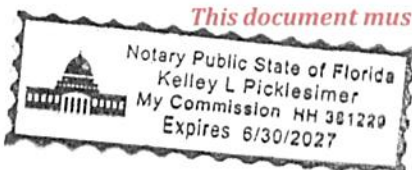
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of JUNE, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

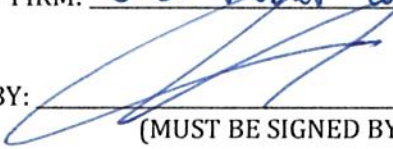
FORM 7.6 – ANTI-COLLUSION

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

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

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

NAME OF FIRM: J.D. Weber Construction Co.

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

PRINTED SIGNATURE: Joseph D. Weber

TITLE: President

ADDRESS: 150 Business Center Dr.

CITY, STATE AND ZIP CODE: Ormond Beach, FL 32174

TELEPHONE: (386) 671-2727

F.E.I.N.: 54-2180252

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: J.D. Weber Construction Co.
- B. Permanent main office address: 150 Business Center Dr. Ormond Beach, FL 32174
- C. Date organized: 08/2005
- D. If a corporation, where incorporated: Florida
- E. How many years have you been engaged in the business under your present firm or trade name? 20 yrs.
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: Underground Utilities, excavation, total site development
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No
- I. Have you ever defaulted on a contract? If so, where and why? No
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ 3,000,000.00
- M. Give bank name, contact name and phone number: PNC Bank Alex Riva 407-428-3021
- Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒ Yes ☐ No

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

STATE OF: FL

COUNTY OF: Volusia

J.D. Weber Construction Co.
Name of Business

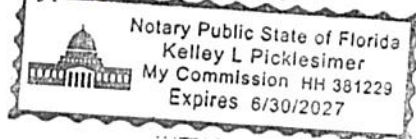
[Signature]
Authorized Signature

Joseph D. Weber - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

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



This document must be completed and returned with your Submittal

G702 APPLICATION and CERTIFICATE for PAYMENT

To: A.M. Weigel Construction Inc
Attn: Eric Sibermann

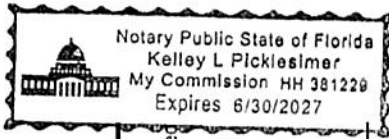
Project: Pathways Elementary Addition
Ormond Beach, FL 32174

Application No: 1
App. Date: June 20, 2026
Period to: June 20, 2026
Project No:
Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For: Via Architect:



CONTRACTOR'S APPLICATION FOR PAYMENT
Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM	1,697,606.23
2. Net Change By Change Orders	
3. CONTRACT SUM TO DATE	1,697,606.23
4. TOTAL COMPLETED AND STORED TO DATE	47,355.45

5. RETAINAGE:

a. 05% of Completed Work	2,367.77
b. of Stored Material	0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE	2,367.77
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	44,987.68
8. CURRENT PAYMENT DUE	44,987.68
9. BALANCE TO FINISH, INCLUDING RETAINAGE	1,652,618.55

Subscribed and sworn before me this 20th day of June 2026

Joseph D. Weber
State of: Florida
County of: Volusia

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT
In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

AMOUNT CERTIFIED
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

G702

APPLICATION and CERTIFICATE for PAYMENT

To: C.W. Roberts Contracting, Inc
Project: Hand Ave Improvements
Ormond Beach, FL

Application No: 2

Distribution to:

- ☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

App. Date: June 17, 2026

Period to: May 31, 2026

Project No:

Contract Date:

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For:

Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM
374,585.45
2. Net Change By Change Orders
0.00
3. CONTRACT SUM TO DATE
374,585.45
4. TOTAL COMPLETED AND STORED TO DATE
114,375.25

5. RETAINAGE:

- a. 05% of Completed Work
5,718.77
- b. of Stored Material
0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE
108,656.48
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
78,289.02
8. CURRENT PAYMENT DUE
30,367.46
9. BALANCE TO FINISH, INCLUDING RETAINAGE
265,928.97



The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: June 17, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 17th day of June 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order	0.00	

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

G702 APPLICATION and CERTIFICATE for PAYMENT

To: Rescon Group Project: Dave & Busters Brevard County, FL

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Application No: 1 App. Date: May 22, 2026
Period to: May 25, 2026
Project No:
Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

Contract For: Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 2,290,302.00
2. Net Change By Change Orders
3. CONTRACT SUM TO DATE 2,290,302.00
4. TOTAL COMPLETED AND STORED TO DATE 363,495.44

5. RETAINAGE:

- a. 10% of Completed Work 36,349.55
- b. 10% of Stored Material 0.00

TOTAL RETAINAGE

36,349.55
327,145.89

6. TOTAL EARNED LESS RETAINAGE

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

8. CURRENT PAYMENT DUE

327,145.89
1,963,156.11

9. BALANCE TO FINISH, INCLUDING RETAINAGE

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: May 22, 2026

State of: Florida County of: Volusia

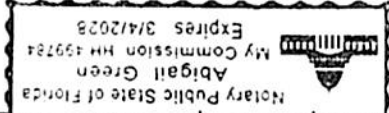
Subscribed and sworn before me this 22nd day of May 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: *Abigail Green* My Commission expires: 03/04/2028

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.



G702 APPLICATION and CERTIFICATE for PAYMENT

To: Old Smyrna Land Company, LLC Project: Florida Days Phase 4
 PO Box 1202 New Smyrna Beach, FL
 New Smyrna Beach, FL 32170
 From: JD Weber Construction Co.
 150 Business Center Drive
 Ormond Beach, FL 32174

Application No: 1
 App. Date: May 22, 2026
 Period to: May 25, 2026
 Project No:
 Contract Date:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

Via Architect:

Contract For:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 2,579,186.55
2. Net Change By Change Orders 2,579,186.55
3. CONTRACT SUM TO DATE 160,916.72
4. TOTAL COMPLETED AND STORED TO DATE

5. RETAINAGE:

- a. 10% of Completed Work 16,091.67
- b. 10% of Stored Material 0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE 16,091.67
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT 144,825.05
8. CURRENT PAYMENT DUE 144,825.05
9. BALANCE TO FINISH, INCLUDING RETAINAGE 2,434,361.50

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approval this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR: JD Weber Construction Co.

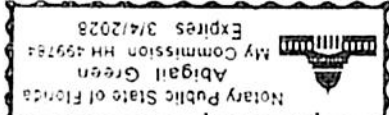
By: Joseph D. Weber Date: May 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of May 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document, my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Abigail Green My Commission expires: 03/04/2028



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPLICATION and CERTIFICATE for PAYMENT

To: First Florida Wynwood, LLC
6555 NE 4th Ave.
Miami, FL 33138

Project: Hallmark Heritage Stormwater &
MOB
Daytona Beach, FL

Application No: 14

App. Date: May 22, 2026

Period to: May 22, 2026

Project No:

Contract Date:

From: JD Weber Construction Co.
150 Business Center Drive
Ormond Beach, FL 32174

Contract For:

Via Architect:

Distribution to:

- ☐ OWNER
☐ CONSTRUCTION MGR
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM
2. Net Change By Change Orders
3. CONTRACT SUM TO DATE
4. TOTAL COMPLETED AND STORED TO DATE

8,415,914.00
0.00
8,415,914.00
5,759,247.90

5. RETAINAGE:

- a. 10% of Completed Work
- b. of Stored Material

575,924.81
0.00

TOTAL RETAINAGE

575,924.81

6. TOTAL EARNED LESS RETAINAGE

5,183,323.09

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

5,076,888.14

8. CURRENT PAYMENT DUE

106,434.95

9. BALANCE TO FINISH, INCLUDING RETAINAGE

3,232,590.91

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D Weber Date: May 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of May 2026

Joseph D Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document; my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Abigail Green

My Commission expires: 03/04/2028

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

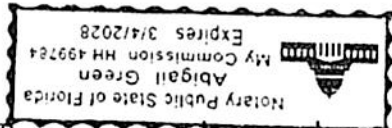
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.



G702

APPLICATION and CERTIFICATE for PAYMENT

To: Vision General Contractors
Attn: Rob Taylor/Tim MarksProject: Tesla - Sanford
Sanford, FL

Application No: 7

Distribution to:

- ☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER

App. Date: June 22, 2026

Period to: June 25, 2026

Project No:

Contract Date:

 From: JD Weber Construction Co.
 150 Business Center Drive
 Ormond Beach, FL 32174

Contract For:

Via Architect:

CONTRACTOR'S APPLICATION FOR PAYMENT

 Application is made for payment, as shown below, in connection with the Contract.
 Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM 4,005,280.00
2. Net Change By Change Orders 80,063.44
3. CONTRACT SUM TO DATE 4,085,343.44
4. TOTAL COMPLETED AND STORED TO DATE 3,134,294.72

5. RETAINAGE:

- a. 10% of Completed Work 313,429.47
- b. of Stored Material 0.00

TOTAL RETAINAGE

6. TOTAL EARNED LESS RETAINAGE

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

8. CURRENT PAYMENT DUE

9. BALANCE TO FINISH, INCLUDING RETAINAGE

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	80,063.44	0.00
Total approval this Month	0.00	0.00
TOTALS	80,063.44	0.00
NET CHANGES by Change Order	80,063.44	



The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: June 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of June 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public Kelley L. Picklesimer My Commission expires 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

TO CONTRACTOR:
CBI Construction - Home Office
431 Office Park Dr
Birmingham, Alabama 35223

PROJECT:
Cottages at Rolling Hills
300 Bushwood Circle
St. Augustine, Florida 32086

APPLICATION NO: 4
INVOICE NO:
PERIOD: 06/01/26 - 06/30/26
PROJECT NO: 25-006
CONTRACT NO: SC-25-006-001
CONTRACT DATE: 10/17/2025
CERTIFICATE DATE: 06/19/2026
SUBMITTED DATE:

FROM SUBCONTRACTOR:
JD Weber Construction
150 BUSINESS CENTER DR ORMOND
BEACH, FLORIDA 32174-2993 United States
Ormond Beach, Florida 32174

SUBCONTRACT FOR: site clearing, grading, utilities, paving, Retaining Wall

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Subcontract. Continuation Sheet is attached.

1.	Original Contract Sum	\$9,269,235.85
2.	Net change by change orders	\$530,780.30
3.	Contract Sum to date (Line 1 + 2)	\$9,800,016.15
4.	Total completed and stored to date (Column G on detail sheet)	\$2,251,516.41
5.	Retainage:	
	a. 10.00% of completed work	\$225,151.66
	b. 0.00% of stored material	\$0.00
	Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$225,151.66
6.	Total earned less retainage (Line 4 less Line 5 Total)	\$2,026,364.75
7.	Less previous certificates for payment (Line 6 from prior certificate)	\$746,214.28
8.	Current payment due:	\$1,280,150.47
9.	Balance to finish, including retainage (Line 3 less Line 6)	\$7,773,651.40

The undersigned certifies that to the best of the Subcontractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

SUBCONTRACTOR: JD Weber Construction

Signed by: Joe Weber, Jr Date: 6/22/2026
By: _____
-89AC9D4ADC44428 -

State of: _____
County of: _____
Subscribed and sworn to before me this _____ day of _____
Notary Public: _____
My commission expires: _____

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:		\$145,774.40	\$0.00
Total approved this month:		\$439,351.00	\$(54,345.10)
Totals:		\$585,125.40	\$(54,345.10)
Net change by change orders:		\$530,780.30	

G702 APPLICATION and CERTIFICATE for PAYMENT

To: ICI Homes
 Attn: Richard Smith
Project: Westlake 6A
 Volusia County
Application No: 6
App. Date: June 22, 2026
Period to: June 25, 2026
Project No:
Contract Date:

From: JD Weber Construction Co.
 150 Business Center Drive
 Ormond Beach, FL 32174
Contract For: Via Architect:

Distribution to:
☐ OWNER
☐ CONSTRUCTION MGR.
☐ ARCHITECT
☐ CONTRACTOR
☐ OTHER



The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM	2,927,847.50
2. Net Change By Change Orders	7,245.00
3. CONTRACT SUM TO DATE	2,935,092.50
4. TOTAL COMPLETED AND STORED TO DATE	2,687,920.16

CONTRACTOR: JD Weber Construction Co.

By: Joseph D. Weber Date: June 22, 2026

State of: Florida County of: Volusia

Subscribed and sworn before me this 22nd day of June 2026

Joseph D. Weber personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public: Kelley L. Picklesimer My Commission expires: 6/30/2027

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	7,245.00	0.00
Total approval this Month	0.00	0.00
TOTALS	7,245.00	0.00
NET CHANGES by Change Order	7,245.00	

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should use an original document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

Year	Make/Model	Fleet #	Type	VIN / Serial #	Tag #	Tag Renew	Driver	FL License #
2006	CAT D3GXL	BD-01	M	JMH02164	Dozer		Dozer	
2016	CATD4K2	BD-02	M	KR200322	Dozer		Dozer	
	D-51	BD-03	M	16478	Dozer		Dozer	
2024	D-51	BD-04	M	B25679	Dozer		Dozer	
2019	D-51	BD-05	M	B20387	Dozer		Dozer	
	CAT D4	BD-07	M	RLT00309	Dozer		Dozer	
	Komatsu D61PXI-24	BD-08	M	B65877	Dozer		Dozer	
2024	Komatsu D39PXI-24	BD-09	M	101894	Dozer		Dozer	
2025	Komatsu D51 PXI-24	BD-10	M	16943	Dozer		Dozer	
2006	CAT 330LC	EX-01	M	DKY04595	Excavator		Excavator	
	Komatsu PC300LC-7EO	EX-02	M	A88145	Excavator		Excavator	
	CAT 313	EX-03	M	JHR10399	Excavator		Excavator	
	CAT 308	EX-04	M	GG082264	Excavator		Excavator	
2023	CAT 340	EX-05	M	EFH10142	Excavator		Excavator	
2010	CAT 312D L	EX-06	M	XGK00220	Excavator		L Hydraulic Excavator	
2014	Cat 308CE2CRSB	EX-07	M	FJX00339	Excavator		Excavator	
2015	CAT 320ELRR	EX-08	M	TFX01081	Excavator		Hydraulic Excavator	
	Komatsu PC55MR-5	EX-09	M	23Z19-J	Excavator		Excavator	
	Caterpillar 301.7 DCR	EX-10	M	LJ800490	Excavator		Mini Excavator	
	CAT 304 E2	EX-11	M	ME403952	Excavator		Excavator	
2018	CAT 336	EX-12	M	RKB01968	Excavator		Excavator	
2016	CAT 336	EX-13	M	RKB20567	Excavator		Excavator	
2020	CAT 336	EX-14	M	GSF10065	Excavator		Excavator	
2020	CAT 304	EX-15	M	ME407873	Excavator		Excavator	
2020	CAT 336C	EX-16	M	GSF10182	Excavator		Excavator	
	CAT 336FL	EX-17	M	RKB07559	Excavator		Excavator	
2024	Komatsu PC138USLC-11	EX-18	M	65380	Excavator		Excavator	
	CAT 305-07CR	EX-19	M	5G503381	Excavator		Excavator	
2025	CAT 325	EX-20	M	325CTE150488	Excavator		Excavator	
2025	CAT315	EX-21	M	WKX50623	Excavator		Excavator	
2015	CAT 120 Motor Grader	MG-01	M	OM9H00322	Grader		Grader	
2020	CAT 120 Motor Grader	MG-02	M	OY9A00136	Grader		Grader	
2023	CAT 140 Motor Grader	MG-03	M	N9400444	Grader		Grader	
2024	JD Motor Grader	MG-04	M	1DW672GPLRF719990	Grader		Grader	
	JD Dump Truck 260E	ORT-03	M	1DW260ETHNF713821	Truck		Off Road Truck	
	JD Dump Truck 260E	ORT-04	M	1DW260ETPNF714814	Truck		Off Road Truck	
2023	JD Dump Truck 260P	ORT-05	M	1DW260PAAPFB07207	Truck		Off Road Truck	
2024	JD Dump Truck 260E	ORT-06	M	1DW260PAHPFB07100	Truck			
2006	CAT 420EIT KMW	RT-01	M	KMW00218	Rubber Tire Hoe		Backhoe Loader	
2021	CAT 289D3 CH2U	SS-01	M	JX907173	Skid Steer		Skid Steer	
2016	CAT 279D Skid Steer	SS-02	M	GTL0057	Skid Steer		Skid Steer	
2021	CAT 289D3 CH2U	SS-03	M	JX907153	Skid Steer		Skid Steer	
2019	CAT 289D	SS-04	M	JX900865	Skid Steer		Skid Steer	
2020	CAT 289D	SS-05	M	JX902854	Skid Steer		Skid Steer	
2021	CAT 299D	SS-06	M	DY904234	Skid Steer		Skid Steer	
2024	CAT 289D3	SS-07	M	JX919561	Skid Steer		Skid Steer	
2024	CAT 265 CH2U	SS-08	M	KR402860	Skid Steer		Skid Steer	
	JD Tractor	TCT-01	M	RW4755P002491	Tractor			
	Massey Ferguson Tractor	TCT-02	M	AG3M46070MJM70201	Tractor		Tractor	
2023	Kubota Tractor	TCT-03	M	KBUMFCDRVN8F94412	Tractor		Tractor	
2025	JD Tractor	TCT-04	M	1L06125MPSH517766	Tractor		Tractor	
2021	CAT CS54B	VR-01	M	CS501067	Roller		Roller	
	CAT CS11GC	VR-02	M	CAT0CS11CRFL00153	Roller		Roller	
	CAT CP56B	VR-03	M	P5600269	Roller			
	SAKAI R2H-4	VR-04	M	1R7-70386	Roller		Roller	
	CS44B	VR-05	M	4G300526	Roller		Roller	
	CAT CS11GC	VR-06	M	CAT0CS11JRFL00109	Roller		Roller	
	Bomag Pneumatic Roller	VR-07	M	1.01539E+11	Roller		Roller	
2006	CAT 938GIIQC-01	WL-01	M	RTB02132	Loader		Loader	
2006	CAT 938GII-02	WL-02	M	RTB01973	Loader		Wheel Loader w/Bucket	
2006	CAT 938GII-03	WL-03	M	CRD01897	Loader		Wheel Loader	
2015	CAT 938K-04	WL-04	M	SWL04224	Loader		Wheel Loader	
2016	Komatsu WA320-7	WL-05	M	A36525	Loader		Wheel Loader	
2017	CAT 938-M	WL-06	M	J3R03917	Loader		Wheel Loader	
2018	Komatsu 320-8	WL-07	M	A38517 (Lucio)	Loader		Wheel Loader	
	Komatsu WA270-8	WL-08	M	83866 (Juan)	Loader		Wheel Loader	
2009	Komatsu WA270-8	WL-09	M	83869 (Miguel)	Loader		Wheel Loader	
	CAT 930M	WL-10	M	0F5K00871	Loader		Wheel Loader	
2022	CAT 906M	WL-11	M	H6605372	Loader		Wheel Loader	
	Komatsu WA270-8	WL-12	M	A28702	Loader		Wheel Loader	
2023	Komatsu WA270-8	WL-13	M	A30124	Loader		Wheel Loader	
2024	Komatsu WA270-8	WL-14	M	A30610	Loader		Wheel Loader	
	CAT 938	WL-15	M	EZY02374	Loader		Wheel Loader	
2012	CAT 725 Water Tanker	WT-01	M	BIL02783				
	Brush Hog		M	20218			SS Attachment	
	Grapple		M	AE6H04869			SS Attachment	
	Broom	BA-18	M	No S/N			SS Attachment	
	Catch Broom	BU-118	M	LXB03019			SS Attachment	
2023	Bush Hog 8" Rotary Cutter		M	1HJKR1223430483			Tractor Attachment	

Joseph D. Weber

**385 Airport Road
Ormond Beach, Florida 32174**

***joejr@jdweberconstruction.com*
office (386) 671-2727
mobile (386) 547-6093**

BACKGROUND SUMMARY

I am a highly motivated, talented, and very organized individual with a thorough knowledge of utility construction and related work. I worked as an employee of a very distinguished and reputable utility contracting company as a member of a pipe laying crew, and over time worked my way into a project management position handling multiple jobs simultaneously under construction.

PROFESSIONAL ACCOMPLISHMENTS

- Florida State Certified Underground Utility and Excavation Contractor - License No. CUC1224075
- Completed a Certified Competent Person Training Program
- Completed a Certified Confined Space Entry Program
- Board Member of the Underground Contractors Association of Central Florida, Inc.
- President of NUCA of Central Florida 2016 - 2017

CAREER HISTORY

Volusia Construction Company, Inc.
South Daytona, Florida

February 1999 to August 2005

WLW Construction, Inc.
Sorrento, Florida

August 2005 to February 2006

J.D. Weber Construction Co.
Ormond Beach, Florida

March 2006 to Present

I am president and co-owner of an underground utility construction company. We have successfully completed numerous private, commercial, and municipal construction projects ranging in value from \$5,000.00 to \$6.0 million. We have successfully completed projects for the FDOT as a subcontractor to a prime paving contractor. We negotiate and competitively bid construction projects in the central Florida area and have a \$20 million bond line. We are on a short list of local contractors with many local municipalities to bid on and perform scheduled and emergency repair work on their infrastructure system.

EDUCATION

Mainland Senior High School

Daytona Beach Community College
Daytona Beach, FL

Chad Baker
115 CR 110
Bunnell FL 32110

Experienced Superintendent with exceptional skills in commercial and private aspects of site earthwork and site utility work. My main strongholds are my ability to perform intense projects with safety, productivity client satisfaction and maintain the upmost profit. I strive to provide the best quality, most profit, and the safest work environment on every project I encounter.

Professional Experience

Ormond Beach, FL

JD Weber Construction

May 2016- Present

Superintendent

- Schedule, coordinate day to day operations
- Attend progress meetings and uphold schedule obligations to the best ability
- Provide adequate material, survey, and necessary instruction to crews for day to day operations
- Enforce a safe work environment in every situation on a daily basis
- Uphold the quality and integrity of the work we perform
- Provide a positive and profitable work environment for all team members

New Smyrna Beach FL

Hazen Construction

June 2008- May 2016

Foreman

- Supervised numerous crews on major roadway and commercial site projects
- Installed gravity sewer and storm drain systems
- Constructed roadways, both municipal and private
- Constructed airport taxiways, runways, and aprons at various airfields to FAA standards
- Constructed roadway to DOT specifications and standards
- Designed and maintained MOT plans on numerous projects
- Installed RCP to 96" in diameter

Ormond Beach FL

Daytona Underground

April 2006- June 2008

Foreman

- Installed water, sewer, and storm drain systems
- Installed gravity sewer and storm drain systems to depths of 23'
- Produced accurate and timely take-off of material to perform tasks
- Operated equipment

Daytona Beach, FL

RA Scott Construction

July 2000-April 2006

Foreman

- Led a crew of 6 daily installing water, sewer, and storm drain piping
- Operated all types of equipment relating to pipe installation (Loader, Bulldozer, Excavator, Roller)
- Established and maintained dewatering operations
- Set Sanitary and Storm Sewer lift stations
- Installed RCP from 12" diameter to 84" diameter

Education

Flagler Palm Coast High School

Additional Skills

- Excellent communication and organizational skills
- Wide knowledge of all aspects of earthwork and utility work
- Highly skilled in operation of construction equipment
- Great skills in determining proper phasing of projects of any size

Chad Kirby

(386) 337-2232
kirbycd@yahoo.com

1640 Juno Trail Unit 204B
Astor, FL 32102

SUMMARY: EXPERIENCE:

JD Weber Construction **August 2023 – Present** **Ormond Beach, FL**
Superintendent – Mass Excavation, Site Work Construction & Underground Utilities

- Schedule, coordinate day to day operations for excavating ponds, fill lots, fill roads
- Schedule equipment and material, and provide necessary instruction to crews for day to day operations
- Meet with owners for pre-construction and weekly meetings and updates
- Enforce a safe work environment in every situation on a daily basis
- Uphold the quality and integrity of the work we perform
- Provide a positive safe environment and learning experience for all employees

Phillips & Jordan **March 2015 – May 2022** **Knoxville, TN**
Superintendent - Mass Excavation, Site Work Construction, & Underground Utilities

- West Palm Beach, FL - C-51 Reservoir
- Brunswick, GA - 150,000 Tons of coal ash removal
- Cheyenne, WY – Successful completion of the Microsoft iCloud building pad expansion
- Successfully built projects in the wet soils of Florida and claylike soils of northern Alabama
- Maintained job water management policies, field reports, and project budgets
- Work with project engineers and project managers to foresee design flaws in advance

Tootle Construction **October 2013 – March 2015** **Longwood, FL**
Superintendent/Quality Control Manager – Landscape, Hardscape, Underground Utility Modifications (\$2.5 Million Contract Value)

- Responsible for subcontractor indoctrination/training in accordance with EM385-1-1
- Assist, review & administer site specific QCP, APP, & EPP plans for submission and approval
- Create and review submittal registries and approvals for furnished materials, testing and equipment
- Develop and administer required Preparatory, Initial and Follow Up Meetings along with Activity Hazard Analysis (AHAs)
- Prepare RFI's and daily reports required by USACE
- Develop and maintain professional and courteous relationship with USACE QA Inspector
- Perform as integral team member to insure each project is completed within allotted budget and schedule

US Army Corps Of Engineers **April 2010 – October 2013** **New Jersey/Afghanistan**
Quality Assurance Specialist – Beach Dredging/Refurbishment, Hazard Waste Removal, War Time Reconstruction

- Supervised site safety and project quality.
- Reviewed contractors site safety plan and APP plan
- Maintained communication with Army Generals to provide updated schedules and budgets
- 250K CY of beach dredging and placement on New Jersey coast line
- 48K barrels of hazardous waste removal via railroad along with 6K feet of slurry wall placement in New Jersey
- Roadways & airfield reconstruction throughout county of Afghanistan
- Instructed US Government and local civilians on how to properly operate heavy equipment
- Received Civilian Combat Pin, Article 5 NATO Medal, Secretary Of Defense War On Terrorism, & US Army Achievement

Fullard Environmental **May 2008 – March 2010** **Ford City, PA**
Site Supervisor – 8(a) Contractor for US Army Corps of Engineers (3 Projects totaling \$15 Million over 3 years)

- Supervision of 9 man crew to replace 315K tons of beach sand for Cape May, NJ
- Supervision of 9 man crew to replace 140K tons of beach sand for Avalon Beach, NJ
- Supervision of 19 man crew to construct 1.5 mile levee at Fort Mott, NJ dredge spoil site

Ginn Golf**January 2005 – April 2008****Celebration, FL****Regional Earthwork Supervisor – Turnkey Golf Course Construction & Residential Site Development**
Responsible for supervision of projects in Florida, Georgia, North & South Carolina, Bahamas, & Virgin Islands

- Responsible for supervision of projects in Florida, Georgia, North & South Carolina, Bahamas, & Virgin Islands
- Maintained budgets, field reports, and water management policies and reports
- Reviewed and maintained daily and weekly jobsite reports for project foreman
- Provided design input during county board meetings alongside architects and project managers
- Ability to successfully build projects in wet soils of Florida and rocky sub surfaces of the Carolinas
- Supervised the logistics of transporting equipment from the States to the Bahamas and Virgin Islands

Halifax Paving**January 2000 – January 2005****Ormond Beach, FL****Superintendent – Turnkey Commercial & Residential Site Contractor**

- Supervised multiple projects and crews
- Maintained communication with project owners and subcontractors
- Worked with project engineers and project managers to foresee design flaws in advance
- Maintained and modified budgets to track schedules and prepare daily reports

Heavy Equipment Operator

- Performing safe operation of heavy construction equipment for site development.
- Working along with surveyors to transfer elevations.
- Communicating with project supervisors to maintain project completion dates.

SKILLS:**Computer:**

MS Office (Including MS Projects), Timberline Project Manager v8.2.0,
QCS/RMS Process pay request and maintain certified payroll when
necessary

Field:

Maintain multiple site work projects and crews simultaneously
Heavy Equipment Operator: Bull Dozers, Front End Loaders, Excavators, & Scrapers
Beginning knowledge in surveying

REFERENCES:

Pat Williams
Vice President /Phillips & Jordan

(865) 250-4125

Robert Thomaston
Project Manager/ Phillips &
Jordan
(407) 466-9305

Steve Thompson
Vice President/ Phillips & Jordan
(865) 310-8752

Willie B. Grier
1324 N Shangri La Drive
South Daytona, FL 32119
386-847-1990

Employment:

JD Weber Construction Company Inc., Ormond Beach, FL

March 2011 - Present

Superintendent

- Attend progress meetings
- Schedule and coordinate daily work schedules for crews
- Provide material, labor and instructions for crews to insure seamless work process
- Ensure the safety of the employees and the job site
- Uphold the quality and integrity of the work

Grier's Masonry Inc., Palm Coast, FL

January 2004 – February 2011

Concrete Foreman

- Set concrete forms to the desired pitch and depth and aligned them
- Spread, leveled and smoothed concrete using rake, shovel, and hand floated
- Molded expansion joints and edges using an edging tools, joiners, and straight edge
- Monitored how the wind, heat, or cold affected the curing of the concrete
- Signaled truck driver to position truck to facilitate pouring concrete

Education:

Atlantic High School- Port Orange, FL
High School diploma

1999 - 2003

Certifications:

- OSHA 10 Hour Safety Training
- HeartSaver First Aid CPR AED Certified

Equipment:

- Loader
- Backhoe
- Dozer
- Trackhoe
- Laser



JD WEBER CONSTRUCTION

TOTAL SITE DEVELOPMENT



List of Key Employees

Joseph D. Weber – President – 28 year's experience

Chad Baker – Operations Manager – 28 year's experience, 11 years employment

Will Grier – General Superintendent, 21 year's experience, 14 years employment

Chad Kirby – General Superintendent, 34 year's experience, 5 years employment

Scott Leffler – Project Manager, 9 year's experience, 2 years employment

Josh Camiletti – Chief Estimator, 12 year's experience, 6 years employment

Carole Granito – Accounting Manager / Payroll, 31 year's experience, 16 years employment

Kelley Picklesimer – Assistant Accounting Manager, 11 year's experience, 7 years employment

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: Plantation Oaks of Ormond Beach II, LLC
Contact Person: Parthur Mychenberg
City, State: Ormond Beach, FL
Telephone Number: (386) 212-1515
Email Address: PRmych@gmail.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 6,687,509
Start/End Date of Contract: July 2024
2. Company Name: Old Mission Key, LLC
Contact Person: Buddy Lacour
City, State: Edge water, FL
Telephone Number: (386) 788-3043
Email Address: buddy@lacourandcompany.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 2,979,715.63
Start/End Date of Contract: March 2024
3. Company Name: Volusia Residential Construction, LLC
Contact Person: Dick Smith
City, State: Flagler, FL
Telephone Number: (386) 547-4729
Email Address: dsmith@ICIhomes.com
Description of goods/services provided: Site development and Underground water/sewer
Contract Amount: \$ 3,375,680
Start/End Date of Contract: December 2023

This document must be completed and returned with your Submittal.

FORM 7.9 - LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: Formasters Concrete Specialists

Description of Work: Fabriform Retention, Winged Concrete end walls, Spillways

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 2

Name: Crafton Electric Inc.

Description of Work: all electrical and panel work

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 3

Name: Rogers Landworks

Description of Work: Clearing & Grubbing wooded areas

Percent of Contract Price: _____

Previous Experience Together: ☒ Yes ☐ No

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Joseph D. Weber President, on behalf
(Print Name and Title)

of J.D. Weber Construction ("Company"), certify that J.D. Weber Construction
(Company Name) (Company Name)

does not:

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

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

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

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

J.D. Weber Construction Co.
COMPANY NAME

Joseph D. Weber
PRINT NAME

STATE OF FLORIDA

[Signature]
SIGNATURE

President
TITLE

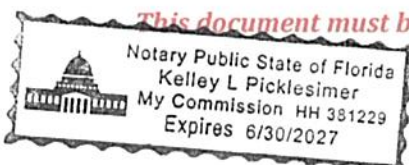
COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

Kelley Picklesimer Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

*This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida***THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:**Project# (as applicable): 26-04-CWBusiness Name: J.D. Weber Construction Co.Contact Person/Title: Joe Weber Jr. - PresidentMailing Address: 150 Business Center DrCity, State, Zip: Ormond Beach, FL 32174Phone Number: (386) 671-2727Email address: Joejr@JDWeberConstruction.com

Physical Presence of Business:

☒ Headquarters☒ Principal Place of Business

Within Legal Boundaries:

☐ City of Port Orange☒ Volusia County☒ State of FloridaFEIN (Federal Employer Identification Number): 54-2180252

Business Structure:

☒ Corporation☐ LLC☐ Partnership☐ Sole Proprietorship☐ Other (Specify): _____****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION******ATTESTATION – I understand that:**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

J.D. Weber Construction Co.

Name of Business

STATE OF: FL

Authorized Signature

COUNTY OF: VolusiaJoseph D Weber - President

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D Weber and who:

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

Kelley Picklesimer Notary Public, State of FL

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Reclaimed Water Reservoir Improvement Project

Solicitation Number: 26-04-CW

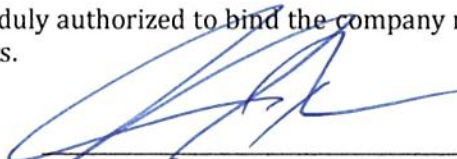
I, the undersigned hereby certify that J.D. Weber Construction Co. (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

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

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

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

Joseph D. Weber - President
Print or Type Name, Title


Signature of Affiant

54-2180252
Federal Employer ID Number (FEIN)

404289
E-Verify Number

STATE OF FLORIDA

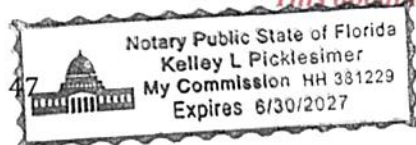
COUNTY OF: FL

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of JUNE, 2026, by Joseph D Weber and who:

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

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

This document to be completed and returned with your Submittal



My Company Profile

Company Information

Company Name

J D Weber Construction, Inc.

Doing Business As (DBA) Name

Company ID

404289

Enrollment Date

Mar 27, 2011

Employer Identification Number (EIN)

542180252

Unique Entity Identifier (UEI)

DUNS Number

624450586

Total Number of Employees

20 to 99

NAICS Code

237

Sector

Construction

Subsector

Heavy and Civil Engineering Construction

**FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

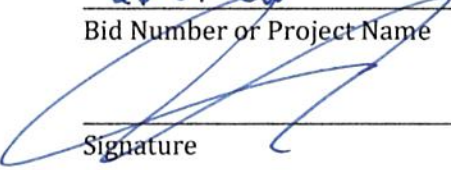
**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

J.D. Weber Construction Co.
Organization Name

26-04-CW
Bid Number or Project Name

Joseph D. Weber - President
Name and Title of Authorized Representative


Signature

6/23/26
Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

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

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

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

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

Date: June 23, 2026

Signed: _____

Entity: J.D. Weber Construction

Name: Joseph D. Weber

Title: President

STATE OF: FL

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of June, 2026, by Joseph D. Weber and who:

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

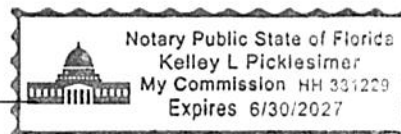
Kelley Picklesimer

Notary Public, State of Florida at Large:

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

(seal)

My commission expires: 6/30/2027



This document must be completed and returned with your Submittal

FORM 7.15 – NO BID RESPONSE

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

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

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

Solicitation: ITB 26-04 Reclaimed Reservoir Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

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

☐ Insufficient time to respond

☐ Specifications unclear (please explain below)

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

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

☐ Unable to meet specifications

☐ Unable to meet bond requirements

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

☐ Unable to meet insurance requirements

☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

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

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

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

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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



Signature of Contractor's Authorized Official

Joseph D. Weber - President

Name & Title of Contractor's Authorized Official

Date: 10/22/26

This document must be completed and returned with your Submittal



(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #26-04

Reclaimed Water Reservoir Improvements

Name of Business: J.D. Weber Construction

Contact Person: Joseph D. Weber

Email Address: Joeir@JDWeberConstruction.com

Authorized Signature: [Signature]

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, return completed, signed form with bid submittal and include on USB/thumb drive.

GENERAL

ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, & General Conditions	LS	1	\$ 55,000.00	\$ 55,000.00
2	Erosion and Sediment Control	LS	1	\$ 87,583.41	\$ 87,583.41
3	Dewatering	LS	1	\$ 65,000.00	\$ 65,000.00

SITE IMPROVEMENTS

4	Site Clearing and Grubbing, and Demolition	LS	1	\$ 81,750.00	\$ 81,750.00
5	Embankment Fill and Reconstruction	CY	22000	\$ 29.00	\$ 638,000.00
6	Place Topsoil & Seed	SY	45,000	\$ 3.52	\$ 158,400.00
7	Channel Construction	LS	1	\$ 281,252.50	\$ 281,252.50
8	Spillway Removal and Reconstruction	LS	1	\$ 216,035.00	\$ 216,035.00
9	Yard Piping	LS	1	\$ 41,314.08	\$ 41,314.08
10	Flow Meter	EA	1	\$ 131,539.72	\$ 131,539.72
11	Gate Valves	EA	2	\$ 11,443.68	\$ 22,887.36
12	Winged Concrete Endwal	EA	2	\$ 12,645.00	\$ 25,290.00
13	Type E Ditch Bottom Inlet	EA	2	\$ 5,075.40	\$ 10,150.80
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ 289.20	\$ 60,732.00
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ 104.56	\$ 18,298.00
15	FDOT 530 RipRap	TN	30	\$ 280.00	\$ 8,400.00
16	Weir Modification	LS	1	\$ 11,100.00	\$ 11,100.00
17	Electrical & Instrumentation Complete	LS	1	\$ 231,740.00	\$ 231,740.00
18	Materials Testing	LS	1	\$ 16,300.00	\$ 16,300.00

ALLOWANCES

19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00

PROJECT CLOSOUT

24	As-Built Survey/Record Drawings	LS	1	\$ 80,000.00	\$ 80,000.00
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LEGEND

EA - EACH

LF - LINEAR FEET

LS - LUMP SUM

TOTAL BASE BID: \$ 2,240,772.87

SY - SQUARE YARD

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute, and appoint:

JAMES C. CONGELIO and JAMES N. CONGELIO

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds, consents of surety, or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

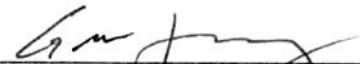
This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011:

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By 
David Satory, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC

By 
Gabriel Jacquez, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC



IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 26th day of January, 2026.

State of Illinois
County of Cook



Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

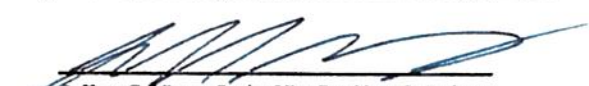
On this 26th day of January, 2026 before me, a Notary Public personally appeared David Satory, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC, and Gabriel Jacquez, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.




Karen M. Szweda, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 24th day of June, 2026.


Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC and WIC



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

WEBER, JOSEPH D

J.D. WEBER CONSTRUCTION CO.
150 BUSINESS CENTER DR
ORMOND BEACH FL 32174

LICENSE NUMBER: CUC1224075

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com

ISSUED: 06/26/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



2026 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P05000113030

Entity Name: J.D. WEBER CONSTRUCTION CO.

Current Principal Place of Business:

150 BUSINESS CENTER DRIVE
ORMOND BEACH, FL 32174

Current Mailing Address:

P.O. BOX 730386
ORMOND BEACH, FL 32173

FEI Number: 54-2180252

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

WEBER, JOSEPH D
150 BUSINESS CENTER DRIVE
ORMOND BEACH, FL 32174 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title D
Name WEBER, JOSEPH D
Address 385 AIRPIORT ROAD
City-State-Zip: ORMOND BCH FL 32174

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: JOSEPH D WEBER

PRESIDENT

01/29/2026

Electronic Signature of Signing Officer/Director Detail

Date

BID BOND

BID BOND

Bond No.: **N/A**

KNOW ALL MEN BY THESE PRESENTS that **J.D. Weber Construction Co.**, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at **150 Business Center Dr., Ormond Beach, FL 32174**, Tel.: **386-671-2727**, (hereinafter called "PRINCIPAL"), and **Swiss Re Corporate Solutions America Insurance Corporation**, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at **1200 Main St. Suite 800, Kansas City, MO 64105**, Tel.: **813-498-1183** (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of **Five Percent of Amount Bid** dollars and (**00**)/100 (\$ **5%**), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated **June 24**, 20**26**, for:

Project Name/Bid No.: Reclaimed Water Reservoir Improvement Project / ITB #26-04-CW

**Project Address: 2401 Bear Trail
Port Orange, FL 32128**

Legal Description: Reclaimed Water Reservoir Lake A and Lake B improvements

Description of Work: Construction of a ditch to connect Lake "A" to Lake "B" in lieu of existing interconnecting piping, Raising the berm height of Lake "B" by one foot. Existing weir modification. Improving reclaimed water piping & intake pump electrical upgrades.

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this **24th** day of **June**, 20**26**, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: **J.D. Weber Construction Co.**

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

Signature

ATTEST:

Signature

Melissa Beckworth, Account Executive
Corporate Secretary (Affix Corporate Seal)

SURETY: **Swiss Re Corporate Solutions America Insurance Corporation**

Attorney-in-Fact (signature)

James C. Congelio, Attorney-in-Fact

Name & Title

James C. Congelio, FL Resident Agent

Name of Local Resident Agent

Tampa, Florida 33607

City, State, Zip

813-498-1183

Telephone:

A.M. Best No.: **A+, XV** NAIC No.: **29874**

STATE OF **Florida**

COUNTY OF **Hillsborough**

Before me this day personally appeared **James C. Congelio** (affiant), who, being

duly sworn, deposes and says that he/she is the Attorney-in-Fact for the

Swiss Re Corporate Solutions America Insurance Corporation

(corporate surety) and that this person has been authorized by

Swiss Re Corporate Solutions America Insurance Corporation

(corporate surety) to execute the foregoing bond on behalf of the

Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant **James C. Congelio**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this **24th** day of **June**, 2026, by **James C. Congelio** and who:

☒ Is personally known to me; or ☐ has produced **N/A** as identification.

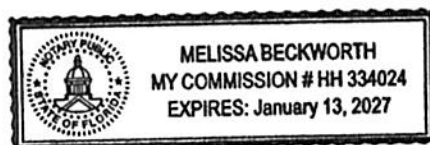
Notary Public, State of **Florida**

Printed, typed or stamped name, commission and expiration: **January 13, 2027**

Melissa Beckworth, Notary Public

END OF BID BOND

This document must be completed and returned with your Submittal





July 2, 2026

Junos Reed, P.E.
City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32127

Email: jureed@port-orange.org

**RE: RECLAIMED WATER RESERVOIR IMPROVEMENTS
PROJECT #26-04-CW
RECOMMENDATION OF AWARD**

Dear Mr. Reed,

The City received six (6) bids on the above referenced project on June 24, 2026. The bid amounts ranged from \$2,350,772.87 - \$3,444,375, a copy of the bid tabulation is attached. We have reviewed the bid packages submitted and determined that JD Weber Construction Co. is the apparent low bidder and hereby submit this bid tabulation and recommendation of award.

J.D. Weber Construction Co., of Ormond Beach, Florida was the apparent low bidder with a total base bid amount (unit price totals) of **\$2,350,772.87**. It appears that J.D. Weber Construction Co. has submitted all of the required documentation in their bid. Their General Contractor's license is in good standing with no active complaints.

We have worked with J.D. Weber Construction Co. on projects of a similar nature in the past and based on the information available recommend that the project be awarded, in its entirety, to J.D. Weber Construction Co. in the total amount of \$2,350,772.87.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad T. Blais".

Brad T. Blais, P.E.
Vice President/Client Manager

BTB:bf

Attachment: Bid Tabulation

cc: Steve Parnell – City of Port Orange

**CITY OF PORT ORANGE
RECLAIMED WATER RESERVOIR IMPROVEMENTS
ITB# 26-04
BID TABULATION**

				JD WEBER CONSTRUCTION Ormond Beach, FL		ALL STATE CIVIL CONSTRUCTION, INC. Daytona Beach, FL		C&B CIVIL CONSTRUCTION, INC. High Springs, FL		MASCI GENERAL CONTRACTORS, INC. Port Orange, FL		PRIME CONSTRUCTION GROUP, INC. Orlando, FL		GPS CIVIL CONSTRUCTION, INC. Holly Hill, FL	
ITEM	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Mobilization, Demobilization, &General Conditions	LS	1	\$ 55,000.00	\$ 55,000.00	\$ 185,493.75	\$ 185,493.75	\$ 271,000.00	\$ 271,000.00	\$ 289,000.00	\$ 289,000.00	\$ 280,000.00	\$ 280,000.00	\$ 250,000.00	\$ 250,000.00
2	Erosion and Sediment Control	LS	1	\$ 87,583.41	\$ 87,583.41	\$ 44,137.50	\$ 44,137.50	\$ 90,000.00	\$ 90,000.00	\$ 59,900.00	\$ 59,900.00	\$ 97,300.00	\$ 97,300.00	\$ 60,000.00	\$ 60,000.00
3	Dewatering	LS	1	\$ 65,000.00	\$ 65,000.00	\$ 87,950.00	\$ 87,950.00	\$ 50,000.00	\$ 50,000.00	\$ 45,000.00	\$ 45,000.00	\$ 71,500.00	\$ 71,500.00	\$ 300,000.00	\$ 300,000.00
SITE IMPROVEMENTS															
4	Site Clearing and Grubbing, and Demolition	LS	1	\$ 81,750.00	\$ 81,750.00	\$ 55,500.00	\$ 55,500.00	\$ 172,000.00	\$ 172,000.00	\$ 79,850.00	\$ 79,850.00	\$ 207,000.00	\$ 207,000.00	\$ 160,000.00	\$ 160,000.00
5	Embankment Fill and Reconstruction	CY	22000	\$ 29.00	\$ 638,000.00	\$ 30.00	\$ 660,000.00	\$ 24.00	\$ 528,000.00	\$ 14.50	\$ 319,000.00	\$ 23.90	\$ 525,800.00	\$ 32.00	\$ 704,000.00
6	Place Topsoil & Seed	SY	45,000	\$ 3.52	\$ 158,400.00	\$ 1.88	\$ 84,600.00	\$ 12.00	\$ 540,000.00	\$ 6.90	\$ 310,500.00	\$ 5.77	\$ 259,650.00	\$ 9.00	\$ 405,000.00
7	Channel Construction	LS	1	\$ 281,252.50	\$ 281,252.50	\$ 518,116.50	\$ 518,116.50	\$ 223,655.00	\$ 223,655.00	\$ 399,965.00	\$ 399,965.00	\$ 795,000.00	\$ 795,000.00	\$ 390,000.00	\$ 390,000.00
8	Spillway Removal and Reconstruction	LS	1	\$ 216,035.00	\$ 216,035.00	\$ 163,462.02	\$ 163,462.02	\$ 220,000.00	\$ 220,000.00	\$ 238,500.00	\$ 238,500.00	\$ 230,500.00	\$ 230,500.00	\$ 282,000.00	\$ 282,000.00
9	Yard Piping	LS	1	\$ 41,314.08	\$ 41,314.08	\$ 62,590.34	\$ 62,590.34	\$ 145,000.00	\$ 145,000.00	\$ 225,139.00	\$ 225,139.00	\$ 70,000.00	\$ 70,000.00	\$ 49,000.00	\$ 49,000.00
10	Flow Meter	EA	1	\$ 131,539.72	\$ 131,539.72	\$ 170,921.00	\$ 170,921.00	\$ 22,000.00	\$ 22,000.00	\$ 358,607.00	\$ 358,607.00	\$ 87,700.00	\$ 87,700.00	\$ 141,000.00	\$ 141,000.00
11	Gate Valves	EA	2	\$ 11,443.68	\$ 22,887.36	\$ 6,333.42	\$ 12,666.84	\$ 5,500.00	\$ 11,000.00	\$ 15,429.00	\$ 30,858.00	\$ 7,700.00	\$ 15,400.00	\$ 19,000.00	\$ 38,000.00
12	Winged Concrete Endwal	EA	2	\$ 12,645.00	\$ 25,290.00	\$ 14,380.20	\$ 28,760.40	\$ 40,000.00	\$ 80,000.00	\$ 14,500.00	\$ 29,000.00	\$ 17,900.00	\$ 35,800.00	\$ 40,000.00	\$ 80,000.00
13	Type E Ditch Bottom Inlet	EA	2	\$ 5,075.40	\$ 10,150.80	\$ 7,532.31	\$ 15,064.62	\$ 15,000.00	\$ 30,000.00	\$ 9,800.00	\$ 19,600.00	\$ 10,900.00	\$ 21,800.00	\$ 8,000.00	\$ 16,000.00
14A	48-Inch Reinforced Concrete Pipe	LF	210	\$ 289.20	\$ 60,732.00	\$ 335.37	\$ 70,427.70	\$ 180.00	\$ 37,800.00	\$ 412.59	\$ 86,643.90	\$ 314.00	\$ 65,940.00	\$ 250.00	\$ 52,500.00
14B	14-Inch by 23-Inch Elliptical Reinforced Concrete Pipe	LF	175	\$ 104.56	\$ 18,298.00	\$ 127.82	\$ 22,368.50	\$ 145.00	\$ 25,375.00	\$ 259.37	\$ 45,389.75	\$ 146.00	\$ 25,550.00	\$ 125.00	\$ 21,875.00
15	FDOT 530 RipRap	TN	30	\$ 280.00	\$ 8,400.00	\$ 465.00	\$ 13,950.00	\$ 400.00	\$ 12,000.00	\$ 215.50	\$ 6,465.00	\$ 169.00	\$ 5,070.00	\$ 500.00	\$ 15,000.00
16	Weir Modification	LS	1	\$ 11,100.00	\$ 11,100.00	\$ 19,931.02	\$ 19,931.02	\$ 4,500.00	\$ 4,500.00	\$ 5,280.00	\$ 5,280.00	\$ 60,750.00	\$ 60,750.00	\$ 13,000.00	\$ 13,000.00
17	Electrical & Instrumentation Complete	LS	1	\$ 231,740.00	\$ 231,740.00	\$ 345,125.00	\$ 345,125.00	\$ 315,000.00	\$ 315,000.00	\$ 454,000.00	\$ 454,000.00	\$ 277,335.00	\$ 277,335.00	\$ 300,000.00	\$ 300,000.00
18	Materials Testing	EA	1	\$ 16,300.00	\$ 16,300.00	\$ 19,162.50	\$ 19,162.50	\$ 50,000.00	\$ 50,000.00	\$ 16,600.00	\$ 16,600.00	\$ 31,600.00	\$ 31,600.00	\$ 20,000.00	\$ 20,000.00
ALLOWANCES															
19	Gopher Tortoise Survey and Permitting	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
20	Gopher Tortoise Burrow Exploration	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
21	Gopher Tortoise Relocation	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
22	Gopher Tortoise Burrow Monitoring During Construction	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
23	Permitting Allowances	LS	1	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00
PROJECT CLOSOUT															
24	As-Built Survey/Record Drawings	LS	1	\$ 80,000.00	\$ 80,000.00	\$ 32,343.75	\$ 32,343.75	\$ 50,000.00	\$ 50,000.00	\$ 49,875.00	\$ 49,875.00	\$ 24,950.00	\$ 24,950.00	\$ 37,000.00	\$ 37,000.00
				TOTAL BASE BID: \$ 2,350,772.87			\$ 2,722,571.44		\$ 2,987,330.00		\$ 3,179,172.65		\$ 3,298,645.00		\$ 3,444,375.00
	Contractor's Total Base Bid As Submitted				\$2,240,772.87										

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF FLORIDA §
 §
COUNTY OF VOLUSIA §

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

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

Further Affiant sayeth not.

Date: September 1st, 2026

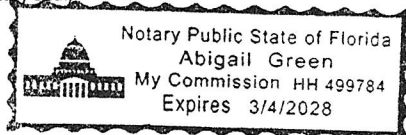
Signed: _____

Print Name: Joseph D. Weber

Title: President

SUBSCRIBED AND SWORN before me by means of [XX] physical presence or [] online notarization on the 1st day of September, 2026 by Joseph D. Weber as President on behalf of JD Weber Construction Co. who is personally known to me or who has produced _____ as identification.

(Notary Seal)



Abigail Green
Notary Public, State of Florida
Printed name, commission and expiration of commission term
Abigail Green, HH499784, 03/04/2028

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

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of Florida

County of Volusia

I, Joseph D. Weber, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the Amerisure Company, under the terms of Policy Number WC 21245570201 for a period from November 1st, 2025 to November 1st, 2026.

WITNESS:

By: Kelley Picklesimer

Name: Kelley Picklesimer

CONTRACTOR:

Company: JD Weber Construction Co.

By: _____

Name/Title: Joseph D. Weber, President

Sworn to/Affirmed and subscribed before me this 15th day of September, 2026, by Joseph D. Weber, who is personally known to me or who produced _____ as identification.

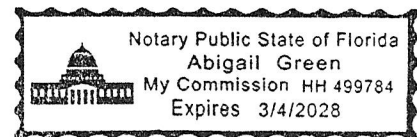
Abigail Green
NOTARY PUBLIC - STATE OF

Type or Print Name: Abigail Green

Commission No.: HH499784

Commission Expires: 03/04/2028

(Seal)



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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/01/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown Insurance Services, Inc. P.O. Box 2412 Daytona Beach FL 32115-2415	CONTACT NAME: Elinn Peacock PHONE (A/C, No, Ext): (386) 944-5804 FAX (A/C, No): (386) 333-6113 E-MAIL ADDRESS: Elinn.Peacock@bbrown.com
INSURED JD WEBER CONSTRUCTION CO. 150 BUSINESS CENTER DRIVE ORMOND BEACH FL 32174	INSURER(S) AFFORDING COVERAGE INSURER A: Amerisure Insurance Co INSURER B: Amerisure Mutual Ins Co INSURER C: XL Specialty Insurance Company INSURER D: Lloyds of London INSURER E: INSURER F:
	NAIC # 19488 23396 37885 85202

COVERAGES**CERTIFICATE NUMBER:** 2025-26**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ XCU included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			GL21245560201	11/01/2025	11/01/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 WORKSITE POLL \$ 100,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			CA212455500	11/01/2025	11/01/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$ 10,000
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB DED ☒ RETENTION \$ 0			CU212455800	11/01/2025	11/01/2026	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y	N/A	WC212455700	11/01/2025	11/01/2026	☒ PER STATUTE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Equipment Floater			UM00053635MA25A	11/01/2025	11/01/2026	Leased/Rented Equipmnt \$330,000 Per Item \$330,000 Aggregate \$660,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SEE NOTES FOR POLICY COVERAGE FORMS

CERTIFICATE HOLDER**CANCELLATION**CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE

PORT ORANGE

FL 32129

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Brown & Brown Insurance Services, Inc.		NAMED INSURED JD WEBER CONSTRUCTION CO.	
POLICY NUMBER			
CARRIER	NAIC CODE		
		EFFECTIVE DATE:	

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

CONTRACTORS POLLUTION:
POLICY #CPL101299001
INSURER D - LLOYDS OF LONDON
EFFECTIVE 11/1/25 TO 11/1/26
EACH INCIDENT \$1,000,000 AGGREGATE \$1,000,000

PROFESSIONAL LIABILITY:
POLICY #BPRO00065001
INSURER D - LLOYDS OF LONDON
EFFECTIVE 7/1/25 to 11/1/26
\$1,000,000 EACH CLAIM \$1,000,000 AGGREGATE

CURRENT BLANKET POLICY FORMS**GENERAL LIABILITY**

- 1) CG7324 0323 - (ADDITIONAL INSURED ONGOING & COMPLETED OPERATIONS, PRIMARY & NON-CONTRIBUTORY, ADDITIONAL INSURED-ARCHITECTS/ENGINEERS/SURVEYORS-EMPLOYED BY OTHER)
- 2) CG7289 0417 - (PER PROJECT AGGREGATE CAP AMOUNT, ADDITIONAL INSURED-LESSOR OF EQUIPMENT, ADDITIONAL INSURED-MANAGER OR LESSOR OF PREMISES, ADDITIONAL INSURED-STATE OR POLITICAL, WAIVER OF SUBROGATION)
- 3) IL7074 0116 - (30 DAY NOTICE OF CANCELLATION)

AUTO LIABILITY

- 1) CA7171 0508 (ADDITIONAL INSURED, WAIVER OF SUBROGATION)
- 2) CA7165 0911 (PRIMARY & NON-CONTRIBUTORY)
- 3) IL7074 0116 (30 DAY NOTICE OF CANCELLATION)

WORKERS COMPENSATION

- 1) WC 00 03 13 - WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT
- 2) WC990902 (30 DAY NOTICE OF CANCELLATION)

EQUIPMENT FLOATER

- 1) HCM050 0319 - CONTRACTOR'S EQUIPMENT COVERAGE SOLUTIONS (LOSS PAYEE)

UMBRELLA

- 1) CU0001 0413 - COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM (ADDITIONAL INSURED)
- 2) CU7467 0323 (PRIMARY & NON-CONTRIBUTORY)
- 3) CU2480 1219 (WAIVER OF SUBROGATION)
- 4) IL7074 0116 (30 DAY NOTICE OF CANCELLATION)

THE UMBRELLA POLICY APPLIES IN EXCESS OF THE GENERAL LIABILITY, AUTO LIABILITY, AND EMPLOYERS LIABILITY



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6b) Approval of Task Authorization No. 12 with Mead & Hunt, Inc. (RFSQ #21-03) for the Reclaimed Water Reservoir Improvements Construction Phase Services

DEPARTMENT: Engineering

RECOMMENDED MOTION: Move to approve Task Authorization No. 12 with Mead & Hunt, Inc. (CA7761) for Reclaimed Water Reservoir Improvements Construction Phase Services for an amount not to exceed \$148,422; and authorize the Mayor and City Clerk to execute all contract documents.

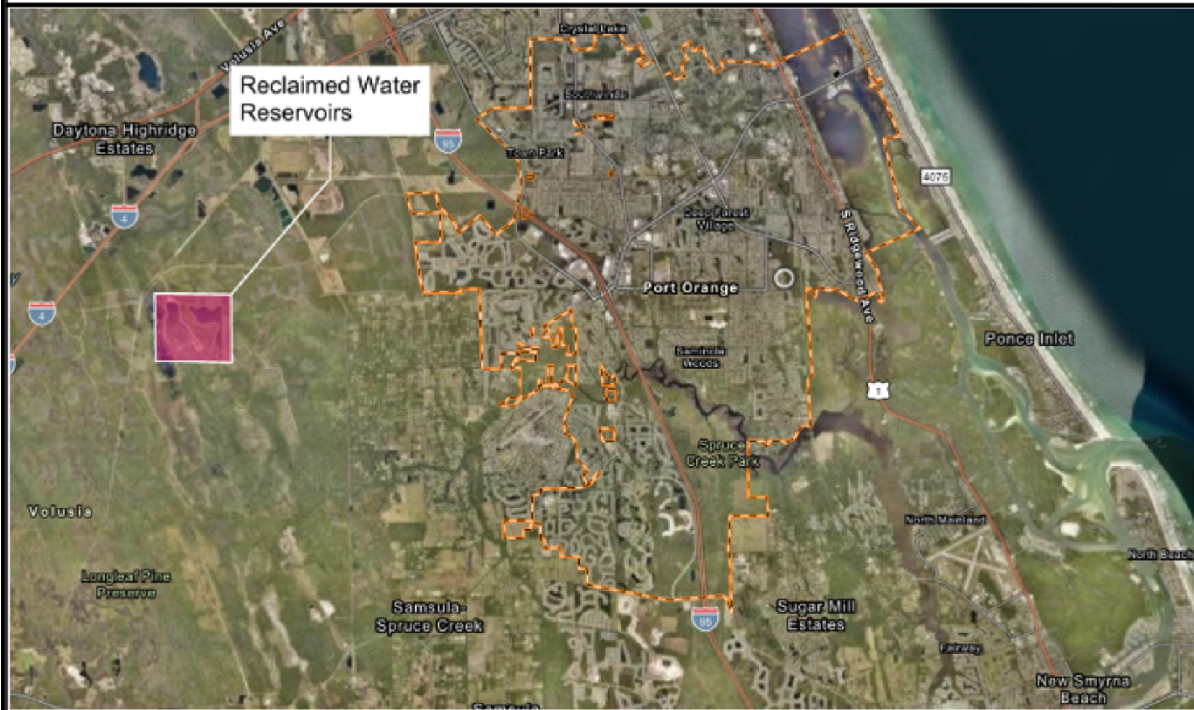
SUMMARY: Engineering Staff requests Council approval of Task Authorization No. 12 with Mead & Hunt, Inc. under the Master Contract for Professional Engineering Services (CA7761) for construction phase services associated with the Reclaimed Water Reservoir Improvement Project.

This Task Authorization is presented in conjunction with the construction contract award to J.D. Weber Construction Company for the Reclaimed Water Reservoir Improvement Project. The project will improve the City's reclaimed water storage and distribution system by replacing the existing interconnecting pipe between Reservoir A and Reservoir B with an open channel connection, increasing reliability, and reducing maintenance requirements. The project also includes raising the Reservoir B berm by one foot, providing approximately 15 million gallons of additional reclaimed water storage capacity, and implementing pump station piping, electrical, and control system improvements to enhance operational flexibility and system reliability.

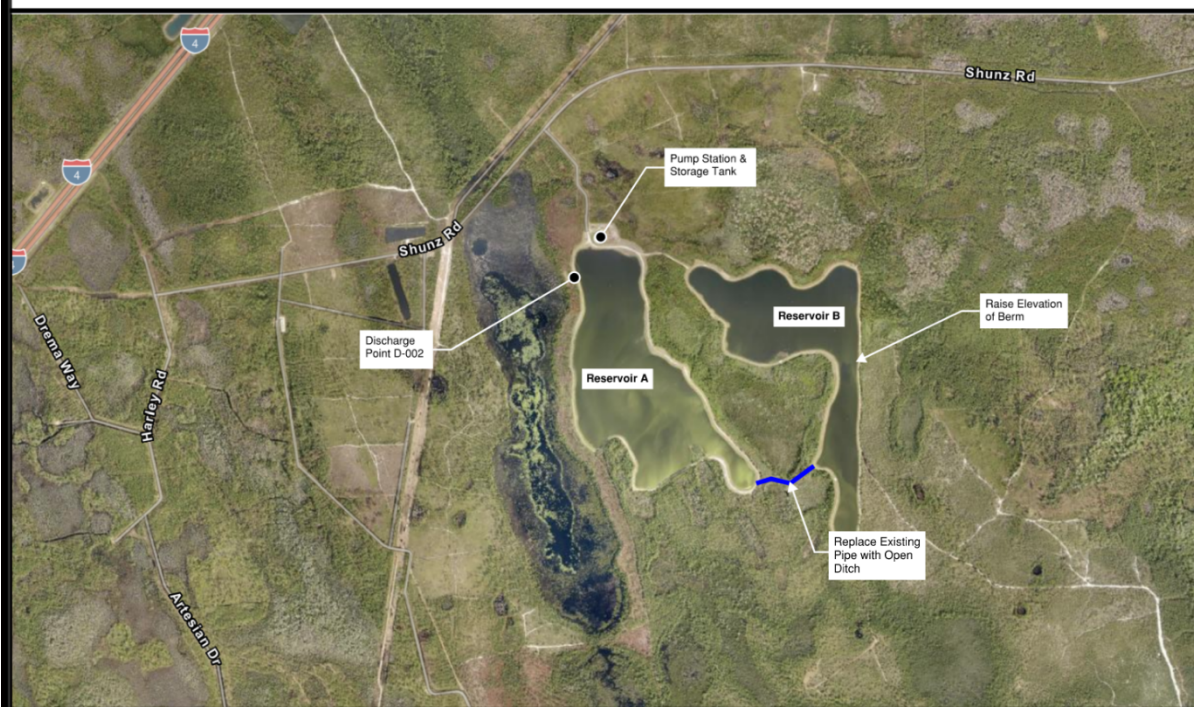
As the Engineer of Record for the project, Mead & Hunt, Inc. will provide construction administration, engineering support, inspection coordination, review of contractor submittals, responses to requests for information, and project closeout services during construction. The duration of Task Authorization No. 12 will coincide with the construction contract and include additional time necessary to complete project closeout activities.



Reclaimed Water Reservoir Improvements



Reclaimed Water Reservoir Improvements



PRESENTER: Junos Reed

ATTACHMENTS:

1.	Task Authorization No 12 - Mead Hunt Reclaim Reservoir	Task Authorization No 12 - Mead Hunt Reclaim Reservoir.pdf
2.	DRAFT - Task Authorization No 12 - Mead Hunt Reclaim Reservoir	DRAFT - Task Authorization No 12 - Mead Hunt Reclaim Reservoir.docx
3.	Reservoir CEI Services Proposal 071626	Reservoir CEI Services Proposal 071626.pdf
4.	EXECUTED Mead and Hunt Contract CA7761	EXECUTED Mead and Hunt Contract CA7761.pdf
5.	Executed Mead Hunt Renewal 1-13-2025	Executed Mead Hunt Renewal 1-13-2025.pdf
6.	EXECUTED - Final Renewal No 2 Mead and Hunt CA7761	EXECUTED - Final Renewal No 2 Mead and Hunt CA7761.pdf
7.	Mead Hunt - HTA - Final Renewal	Mead Hunt - HTA - Final Renewal.pdf
8.	COI - Mead Hunt RSFQ 21-03 Maser 7.1.2027 All	COI - Mead Hunt RSFQ 21-03 Maser 7.1.2027 All.pdf

Julia Wiggins
 Richard Colby
 Junos Reed
 Sue Wang
 Matthew Jones
 Wayne Clark

Created/Initiated - 08/19/2026
 Approved - 08/19/2026
 Approved - 08/25/2026
 Approved - 08/25/2026
 Approved - 09/08/2026
 Final Approval - 09/08/2026

TASK AUTHORIZATION NO. 12
Master Contract for Professional Engineering Services for
Public Works, Utilities and Environmental Services
dated January 18, 2022,
Between the City of Port Orange, Florida and Mead and Hunt, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Mead and Hunt, Inc.**, Florida corporation, with its principal place of business at 2440 Deming Way, Middleton, Wisconsin 53562-1562 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to the **City of Port Orange Reclaimed Water Reservoir Improvements Construction Phase Services**, and as more particularly described in the Scope of Services attached hereto and incorporated herein as **Task Authorization Exhibit "1."**

3. Engineer shall complete the services to be provided herein and the Compliance Plan shall be completed no later than **760 days** from the date of issuance of a written Notice to Proceed by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1," attached hereto and made a part hereof, subject to a limit not to exceed **\$148,422.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. **Truth-in-Negotiations**

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts

(c) or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

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

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

Witnesses:

MEAD AND HUNT, INC.

Printed Name: _____

By: _____
Brad Blais, Vice President

Printed Name: _____

Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Scott Stiltner, Mayor

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

EXHIBIT “1”

Engineer’s Proposal

Consisting of 8 Pages

July 16, 2026

Junos Reed, P.E.
City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: jureed@port-orange.org

**Subject: CITY OF PORT ORANGE RECLAIMED WATER RESERVOIR IMPROVEMENTS,
PROJECT #26-04-CW
CONTRACT ADMINISTRATION AND EOR SCOPE OF SERVICES AND FEE ESTIMATE**

Dear Junos:

On June 24, 2026, the City received six (6) bids for the above referenced project. J.D. Weber Construction Co., of Ormond Beach, Florida was the apparent low bidder with a total base bid amount (unit price totals) of \$2,350,772.87. We are pleased to submit the enclosed scope of services and fee estimate for contract administration and engineer of record (EOR) services for this project.

The proposed scope includes: project management, contract administration and EOR services as further described herein. The total project duration is twelve (12) months. We appreciate this opportunity to continue to be of service. Please do not hesitate to contact our office if you have additional questions or concerns.

Sincerely,

MEAD & HUNT, Inc.

A blue ink signature of Brad T. Blais, written in a cursive style.

Brad T. Blais, P.E.
Vice President

A blue ink signature of Noah Adamoski, written in a cursive style.

Noah Adamoski
Construction Services Supervisor

BTB/NA;bf

Enclosure: Scope of Services and Fee Estimate

**CITY OF PORT ORANGE
RECLAIMED WATER RESERVOIR IMPROVEMENTS
PROJECT #26-04-CW
CONTRACT ADMINISTRATION AND EOR SCOPE OF SERVICES AND FEE ESTIMATE**

This Task Order is in conformance with the Master Contract for Engineering Services, pursuant to RFSQ #21-03, Professional Engineering Services for Public Works, Utilities, and Environmental Services dated January 18, 2022, between the City of Port Orange (OWNER) and Mead & Hunt, Inc. (MEAD & HUNT) and is referred to herein as the Contract.

PROJECT UNDERSTANDING

The project involves civil, mechanical and electrical improvements at the City's reclaimed water reservoir site. These improvements include:

- Fill placement to raise the operating height of the perimeter berms to create additional storage volume.
- Removal of the existing culvert between Ponds A & B and construction of a stabilized channel to convey flow between ponds.
- Installation of new control panels and instrumentation to control pumps and monitor flow.

SCOPE OF SERVICES

After receipt of authorization to proceed, MEAD & HUNT will provide the following services:

PHASE 1 – PROJECT MANAGEMENT

Project Coordination

MEAD & HUNT'S Project Manager (PM) will monitor and manage the project budget, schedule, and scope throughout the estimated 12-month project duration. The PM will manage the development of project work and subconsultant efforts. The PM will provide project updates to the OWNER via work activity reports on monthly invoices, monthly project status reports attached to monthly invoices, monthly project status meetings, and meeting minutes.

Subconsultant Work Coordination

MEAD & HUNT will coordinate with the subconsultants to manage and implement the Project. This phase includes collaboration meetings between MEAD & HUNT and its subconsultants to coordinate and implement work efforts.

Deliverables – Project Management

- Kick-Off Meeting Agenda and Summary

PHASE 2 – CONTRACT ADMINISTRATION AND ENGINEER OF RECORD (EOR) SERVICES DURING CONSTRUCTION

MEAD & HUNT will provide the following EOR services during construction, in conjunction with the CEI services being provided by the OWNER/others.

Issued for Construction Documents

MEAD & HUNT will incorporate applicable bid-phase modifications to the engineering drawings and technical specifications and provide those to the OWNER (in electronic format) for inclusion in the contract documents.

Deliverables – Issued for Construction Documents

- Issued for Construction Drawings (electronic PDF format)
- Issued for Construction Specifications (electronic PDF format)

Construction Submittal Review

MEAD & HUNT will review and respond to contractor construction submittals and resubmittals regarding the design for compliance with the design and provide response to the CEI team for response back to contractor per the construction contract requirements. MEAD & HUNT will maintain a detailed log of submittals and actions.

Deliverables – Construction Submittal Review

- Approved/Rejected Submittals
- Submittal Log

Requests for Information (RFI's)

MEAD & HUNT will review up to contractor RFI's related to clarification of the design intent and provide response to the CEI team for response back to contractor per the construction contract requirements. MEAD & HUNT will maintain a detailed RFI log and actions/responses.

Deliverables – RFIs

- RFI Responses
- RFI Log

Pre-Construction Meeting

MEAD & HUNT will coordinate and preside over the pre-construction meeting with the OWNER, contractor, and other project stakeholders. MEAD & HUNT will prepare agenda and distribute to all invitees prior to meeting. MEAD & HUNT will prepare meeting summary and distribute meeting summary to all attendees.

Deliverables – Pre-Construction Meeting

- Meeting Agenda and Summary

Notice to Proceed

MEAD & HUNT will issue the Notice to Proceed (NTP) to the contractor on behalf of the OWNER.

Deliverables – Notice to Proceed

- Notice to Proceed Letter

Progress Meetings

MEAD & HUNT will coordinate and preside over monthly construction progress meetings. MEAD & HUNT will prepare agendas, meeting summaries, and distribute to all attendees.

Deliverables – Progress Meetings

- Monthly progress meeting agendas and summaries

Site Visits

Substantial and Final Completion Reviews

MEAD & HUNT will conduct periodic site visits with the OWNER during the course of construction to monitor construction progress and document conformance with the project plans and specifications. MEAD & HUNT will attend and document site visits to establish substantial and final construction completion. MEAD & HUNT will assist the OWNER and CEI team in identification of outstanding work items and development of preliminary and final punchlists.

Pay Applications

MEAD & HUNT will review monthly payment applications from the contractor and provide a written recommendation for payment to the OWNER based on construction progress. MEAD & HUNT will review pay application supporting documentation, including updated construction schedules, record drawings, stored materials, release of liens, and as approved change/field orders.

Deliverables – Pay Applications

- Pay Application Recommendations

PHASE 3 – PROJECT CLOSEOUT

As-Built Review and Record Drawings

MEAD & HUNT will review contractor final as-builts for compliance with the contract documents. MEAD & HUNT will prepare final record drawings utilizing contractor as-builts and inspector sketches, photographs, and other documentation. Record drawings to be provided electronically to the OWNER.

Deliverables – As-Built Review and Record Drawings

- Acceptable Contractor As-Builts (Electronic PDF and AutoCAD Format)
- Record Drawings (Electronic PDF and AutoCAD Format)

Permitting Closeout

MEAD & HUNT will prepare and provide certifications of completion to the following permitting agencies for permit closeout:

- FDEP
- SJRWMD

PHASE 4 – SUBCONSULTANTS AND REIMBURSABLES

MEAD & HUNT will engage requisite subconsultants to provide professional services including survey, geotechnical and/or biological assistance as may be required for project support. An allowance is established for sub-consultant expenses. These expenses will be billed at actual cost plus 10%. If the allowance is insufficient, a scope change may be required to augment the allowance.

MEAD & HUNT will charge miscellaneous reimbursable expenses against the established allowance. Reimbursable expenses will be charged at actual cost plus 10%.

PHASE 5 – CONTINGENCY

If additional services are identified as needed or required during the duration of the project, MEAD & HUNT will request written approval from the OWNER to utilize contingency funds for any additional work items. Contingency funds will be billed at time and expense. Additional work will be billed per the agreed upon contract hourly rates. MEAD & HUNT will not bill against the contingency funding without prior authorization from the OWNER.

EXCLUSIONS

This scope of services excludes all items not specifically described herein.

SCHEDULE

Mead & Hunt estimates the work included in this task order will be completed in accordance with the following schedule:

Phase/Task	Duration to Complete (calendar days)	Commencing Upon
<i>Phase 1 – Project Management</i>	<i>365 days</i>	<i>Receipt of Notice to Proceed</i>
<i>Phase 2 – Construction Contract Administration and EOR Services</i>	<i>365 days</i>	<i>OWNER award to Contractor</i>
<i>Phase 3 – Project Closeout</i>	<i>30 days</i>	<i>Substantial Completion by Contractor</i>

COMPENSATION

Phase/Task	Fee/Cost	Basis
<i>Phase 1 – Project Management</i>	<i>\$17,400</i>	<i>Lump Sum</i>
<i>Phase 2 – Construction Contract Administration and EOR Services</i>	<i>\$93,494</i>	<i>Lump Sum</i>
<i>Phase 3 – Project Closeout</i>	<i>\$14,228</i>	<i>Lump Sum</i>
<i>Subtotal</i>	<i>\$125,122</i>	
<i>Phase 4 – Subconsultants/Reimbursables</i>	<i>\$13,300</i>	<i>Actual cost plus 10 %</i>
<i>Phase 5 – Contingency</i>	<i>\$10,000</i>	<i>TBD</i>
<i>TOTAL</i>	<i>\$148,422</i>	

Authorization

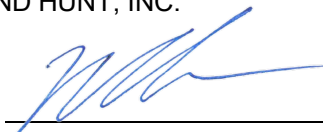
The Scope of Services and Compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by Mead & Hunt.

Signatures of authorized representatives of the City of Port Orange and Mead & Hunt shall convert this proposal to an Agreement between the two parties, and receipt of one signed copy shall be considered authorization to proceed with the work described in the Scope of Services.

MEAD AND HUNT, INC.

Approved by: MEAD AND HUNT, INC.

By:



Author/Submitter

By:



Authorized Signer Review

Name: Noah Adamoski

Name: Brad T. Blais, P.E.

Title: Construction Services Supervisor

Title: Vice President

Date: July 16, 2026

Date: July 16, 2026

Accepted by: CITY OF PORT ORANGE

By:

The above person is authorized to sign for the Owner and bind the Owner to the terms hereof.

Name: _____

Title: _____

Date: _____

Junos Reed, P.E.

July 16, 2026

Page 8

PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

IF THE CONTRACTOR (MEAD & HUNT, INC.) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S (MEAD & HUNT, INC.'s) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY HALL, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FL 32129, City Clerk, Robin Fenwick, (386) 506-5566, rfenwick@port-orange.org.

TASK AUTHORIZATION NO. 12
Master Contract for Professional Engineering Services for
Public Works, Utilities and Environmental Services
dated January 18, 2022,
Between the City of Port Orange, Florida and Mead and Hunt, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Mead and Hunt, Inc.**, Florida corporation, with its principal place of business at 2440 Deming Way, Middleton, Wisconsin 53562-1562 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to the **City of Port Orange Reclaimed Water Reservoir Improvements Construction Phase Services**, and as more particularly described in the Scope of Services attached hereto and incorporated herein as **Task Authorization Exhibit "1."**

3. Engineer shall complete the services to be provided herein and the Compliance Plan shall be completed no later than **730 days** from the date of issuance of a written Notice to Proceed by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1," attached hereto and made a part hereof, subject to a limit not to exceed **\$148,422.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts (c) or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

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

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

Witnesses:

MEAD AND HUNT, INC.

Printed Name: _____

By: _____
Brad Blais, Vice President

Printed Name: _____

Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

July 16, 2026

Junos Reed, P.E.
City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: jureed@port-orange.org

**Subject: CITY OF PORT ORANGE RECLAIMED WATER RESERVOIR IMPROVEMENTS,
PROJECT #26-04-CW
CONTRACT ADMINISTRATION AND EOR SCOPE OF SERVICES AND FEE ESTIMATE**

Dear Junos:

On June 24, 2026, the City received six (6) bids for the above referenced project. J.D. Weber Construction Co., of Ormond Beach, Florida was the apparent low bidder with a total base bid amount (unit price totals) of \$2,350,772.87. We are pleased to submit the enclosed scope of services and fee estimate for contract administration and engineer of record (EOR) services for this project.

The proposed scope includes: project management, contract administration and EOR services as further described herein. The total project duration is twelve (12) months. We appreciate this opportunity to continue to be of service. Please do not hesitate to contact our office if you have additional questions or concerns.

Sincerely,

MEAD & HUNT, Inc.

A blue ink signature of Brad T. Blais, written in a cursive style.

Brad T. Blais, P.E.
Vice President

A blue ink signature of Noah Adamoski, written in a cursive style.

Noah Adamoski
Construction Services Supervisor

BTB/NA;bf

Enclosure: Scope of Services and Fee Estimate

**CITY OF PORT ORANGE
RECLAIMED WATER RESERVOIR IMPROVEMENTS
PROJECT #26-04-CW
CONTRACT ADMINISTRATION AND EOR SCOPE OF SERVICES AND FEE ESTIMATE**

This Task Order is in conformance with the Master Contract for Engineering Services, pursuant to RFSQ #21-03, Professional Engineering Services for Public Works, Utilities, and Environmental Services dated January 18, 2022, between the City of Port Orange (OWNER) and Mead & Hunt, Inc. (MEAD & HUNT) and is referred to herein as the Contract.

PROJECT UNDERSTANDING

The project involves civil, mechanical and electrical improvements at the City's reclaimed water reservoir site. These improvements include:

- Fill placement to raise the operating height of the perimeter berms to create additional storage volume.
- Removal of the existing culvert between Ponds A & B and construction of a stabilized channel to convey flow between ponds.
- Installation of new control panels and instrumentation to control pumps and monitor flow.

SCOPE OF SERVICES

After receipt of authorization to proceed, MEAD & HUNT will provide the following services:

PHASE 1 – PROJECT MANAGEMENT

Project Coordination

MEAD & HUNT'S Project Manager (PM) will monitor and manage the project budget, schedule, and scope throughout the estimated 12-month project duration. The PM will manage the development of project work and subconsultant efforts. The PM will provide project updates to the OWNER via work activity reports on monthly invoices, monthly project status reports attached to monthly invoices, monthly project status meetings, and meeting minutes.

Subconsultant Work Coordination

MEAD & HUNT will coordinate with the subconsultants to manage and implement the Project. This phase includes collaboration meetings between MEAD & HUNT and its subconsultants to coordinate and implement work efforts.

Deliverables – Project Management

- Kick-Off Meeting Agenda and Summary

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MEAD & HUNT will review and respond to contractor construction submittals and resubmittals regarding the design for compliance with the design and provide response to the CEI team for response back to contractor per the construction contract requirements. MEAD & HUNT will maintain a detailed log of submittals and actions.

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MEAD & HUNT will review up to contractor RFI's related to clarification of the design intent and provide response to the CEI team for response back to contractor per the construction contract requirements. MEAD & HUNT will maintain a detailed RFI log and actions/responses.

Deliverables – RFIs

- RFI Responses
- RFI Log

Pre-Construction Meeting

MEAD & HUNT will coordinate and preside over the pre-construction meeting with the OWNER, contractor, and other project stakeholders. MEAD & HUNT will prepare agenda and distribute to all invitees prior to meeting. MEAD & HUNT will prepare meeting summary and distribute meeting summary to all attendees.

Deliverables – Pre-Construction Meeting

- Meeting Agenda and Summary

Notice to Proceed

MEAD & HUNT will issue the Notice to Proceed (NTP) to the contractor on behalf of the OWNER.

Deliverables – Notice to Proceed

- Notice to Proceed Letter

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MEAD & HUNT will conduct periodic site visits with the OWNER during the course of construction to monitor construction progress and document conformance with the project plans and specifications. MEAD & HUNT will attend and document site visits to establish substantial and final construction completion. MEAD & HUNT will assist the OWNER and CEI team in identification of outstanding work items and development of preliminary and final punchlists.

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MEAD & HUNT will review contractor final as-builts for compliance with the contract documents. MEAD & HUNT will prepare final record drawings utilizing contractor as-builts and inspector sketches, photographs, and other documentation. Record drawings to be provided electronically to the OWNER.

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- Acceptable Contractor As-Builts (Electronic PDF and AutoCAD Format)
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Permitting Closeout

MEAD & HUNT will prepare and provide certifications of completion to the following permitting agencies for permit closeout:

- FDEP
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If additional services are identified as needed or required during the duration of the project, MEAD & HUNT will request written approval from the OWNER to utilize contingency funds for any additional work items. Contingency funds will be billed at time and expense. Additional work will be billed per the agreed upon contract hourly rates. MEAD & HUNT will not bill against the contingency funding without prior authorization from the OWNER.

EXCLUSIONS

This scope of services excludes all items not specifically described herein.

SCHEDULE

Mead & Hunt estimates the work included in this task order will be completed in accordance with the following schedule:

Phase/Task	Duration to Complete (calendar days)	Commencing Upon
<i>Phase 1 – Project Management</i>	<i>365 days</i>	<i>Receipt of Notice to Proceed</i>
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COMPENSATION

Phase/Task	Fee/Cost	Basis
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<i>Subtotal</i>	<i>\$125,122</i>	
<i>Phase 4 – Subconsultants/Reimbursables</i>	<i>\$13,300</i>	<i>Actual cost plus 10 %</i>
<i>Phase 5 – Contingency</i>	<i>\$10,000</i>	<i>TBD</i>
<i>TOTAL</i>	<i>\$148,422</i>	

Authorization

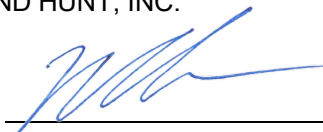
The Scope of Services and Compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by Mead & Hunt.

Signatures of authorized representatives of the City of Port Orange and Mead & Hunt shall convert this proposal to an Agreement between the two parties, and receipt of one signed copy shall be considered authorization to proceed with the work described in the Scope of Services.

MEAD AND HUNT, INC.

Approved by: MEAD AND HUNT, INC.

By:



Author/Submitter

By:



Authorized Signer Review

Name: Noah Adamoski

Name: Brad T. Blais, P.E.

Title: Construction Services Supervisor

Title: Vice President

Date: July 16, 2026

Date: July 16, 2026

Accepted by: CITY OF PORT ORANGE

By:

The above person is authorized to sign for the Owner and bind the Owner to the terms hereof.

Name: _____

Title: _____

Date: _____

Junos Reed, P.E.

July 16, 2026

Page 8

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IF THE CONTRACTOR (MEAD & HUNT, INC.) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S (MEAD & HUNT, INC.'s) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY HALL, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FL 32129, City Clerk, Robin Fenwick, (386) 506-5566, rfenwick@port-orange.org.



CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, 2022, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **MEAD AND HUNT, INC.**, a Wisconsin corporation, registered to transact business in Florida, whose principal address is 2440 Deming Way, Middleton, Wisconsin 53562-1562 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

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

1. Provision of Services

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

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Billing Rate Schedule as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

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

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

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

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

2. Authorization for Services This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "2."

- a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.
- b. No new or additional Task Authorization shall be issued after the original expiration date of this Contract. The extension of this Contract to coincide with the completion of an existing Task Authorization issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Engineer to enter into a new or additional Task Authorization after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization.

3. City Obligations The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

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

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

6. Statement of Engineering Services The Engineer shall:

- (a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;
- (b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;
- (c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.
- (d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);
- (e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:
 - (i) Site Visits/Special Permits The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.
 - (ii) Preliminary Sketches and Opinion of Probable Construction Costs The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.
 - (iii) Working Drawings and Specifications After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

- (iv) Original Drawings - Final Plans Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.
- (v) Revision of Final Drawings and Specifications The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.
- (vi) Bidding The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. Responsibility of the Engineer The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

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

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

10. Modifications to Scope of Work/Change Orders

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

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

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

11. Subcontractors or Sub-Subcontractors

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors or Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

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

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

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

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

- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.
 - (vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.
 - (vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- (c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.
- (d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.
- (e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

- (i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.
- (ii) The total of:
 - a. The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;
 - b. The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and
 - c. A sum, as profit on Paragraph 11 (a) above, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.
- (iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

13. Termination for Non-Appropriation of Funds

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

14. Engineer's Records. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 <http://dos.myflorida.com/library-archives/records-management/>. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. Examination of Records

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

(b) The Engineer further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

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

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	Workers' Compensation The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	Contract Amount Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	Limits Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<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 Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Bodily 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 - \$ To be determined.	
☐	Engineer 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 - \$ To be determined.	
☐	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.		

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

19. Sovereign Immunity. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

20. Liability for Loss or Damage

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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

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

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

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

22. E-Verify. Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

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

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

25. Controlling Law **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

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

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

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: Lynn Stevens, Public Works & Utilities Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5575
Engineer:	Mead and Hunt, Inc. Attention: Brad Blais, Vice President 2440 Deming Way, Middleton Wisconsin 53562-1562 (386) 761-6810 – Telephone brad.blais@meadhunt.com 4401 Eastport Parkway Port Orange, Florida 32127

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

30. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

31. Waiver of Breach and Materiality Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. Contract Construction

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

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

[Remainder of this page intentionally left blank]

Witnesses:

Bernadette Fox
Printed Name: Bernadette Fox

Tonya Senier
Printed Name: Tonya Senier

MEAD AND HUNT, INC.

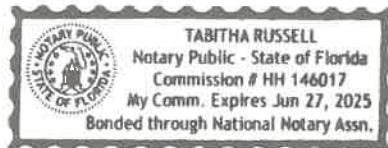
By: [Signature]
Brad Blais, Vice President

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

Date: January 6, 2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

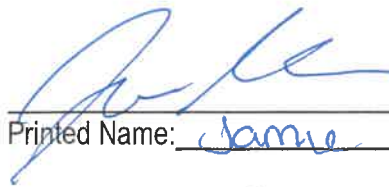
The foregoing instrument was acknowledged before me by means of ✓ physical presence or online notarization, this 6th day of January, 2022, by Brad Blais, as Vice President of Mead and Hunt, Inc., a Wisconsin corporation, registered to transact business in Florida. He is ✓ personally known or produced as identification.



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

Witnesses:

CITY OF PORT ORANGE


Printed Name: Jamie Miller

By: 
Donald O. Burnette, Mayor


Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ☒ personally known or ☐ produced as identification.




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

Witnesses:



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

Date: 1/18/2022


Printed Name: Jamie Miller


Printed Name: Matt Jones

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ☒ personally known or ☐ produced as identification.




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

EXHIBIT “1”

Engineer's Billing Rate Schedule and RFSQ 21-03 Section 3

Consisting of 2 Pages

MEAD & HUNT, Inc.
Municipal Billing Rate Schedule
Effective January 1, 2022

Standard Billing Rates

Clerical.....	\$78.00 / hour
Technical Editor.....	\$117.00 / hour
Technician I, Technical Writer, Administrative Assistant.....	\$96.00 / hour
Technician II, Surveyor - Instrument Person	\$117.00 / hour
Technician III	\$133.00 / hour
Technician IV	\$149.00 / hour
Senior Technician	\$163.00 / hour
Engineer I, Scientist I, Architect I, Interior Designer I, Planner I	\$130.00 / hour
Engineer II, Scientist II, Architect II, Interior Designer II, Planner II	\$148.00 / hour
Engineer III, Scientist III, Architect III, Interior Designer III, Planner III	\$160.00 / hour
Senior Engineer, Senior Scientist, Senior Architect, Senior Interior Designer, Senior Planner, Senior Economist.....	\$167.00 / hour
Project Engineer, Project Scientist, Project Architect, Project Interior Designer, Project Planner	\$177.00 / hour
Senior Project Engineer, Senior Project Scientist, Senior Project Architect, Senior Project Interior Designer, Senior Project Planner	\$191.00 / hour
Senior Associates	\$210.00 / hour
Principal/Senior Client Manager.....	\$249.00 / hour

Expenses

Out-Of-Pocket Direct Job Expenses.....	cost plus 15%
Such as reproductions, sub-consultants / contractors, postage, permit application fees, etc.	

Travel Expense

Company or Personal Car Mileage	IRS rate / mile
Air and Surface Transportation.....	cost plus 15%
Lodging and Sustenance	cost plus 15%

Billing & Payment

Travel time is charged for work required to be performed out of Volusia County. Invoicing is on a monthly basis for work performed.

~~This schedule of billing rates is effective January 1, 2022, and will remain in effect until December 31, 2022, unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases. This schedule is subject to annual increases.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
 - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
 - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
 - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
 - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
 - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
 - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
 - Engineering analysis/design and permitting of capital improvement projects, and
 - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
 - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
 - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
 - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ____
Master Contract for Services dated _____
Between the City of Port Orange, Florida and Mead and Hunt, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **MEAD AND HUNT, INC.**, Wisconsin corporation, registered to transact business in Florida, with its principal place of business at 2440 Deming Way, Middleton, Wisconsin 53562-1562 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

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

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization

6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery

by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Engineer and the City until the City signs this Task Authorization.

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

Witnesses:

MEAD AND HUNT, INC.

Printed Name: _____

By: _____
Brad Blais, Vice President

Printed Name: _____

Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____

Donald Burnette, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____



CITY OF PORT ORANGE

Agreement

RENEWAL FORM

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

Verify your records by providing the following information:

Name of Company/Organization: Mead and Hunt, Inc. ("Contractor")

Name of Contact Person: Brad Blais, Vice President

Mailing Address: 2440 Deming Way

Middleton, WI 53562-1562

E-Mail Contact Address: brad.blais@meadhunt.com

Phone: (386) 761-6810 Fax: N/A

☒ Standard Contract for Service CA No. 7761

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2025 To: January 17, 2026

Contractor to Provide to City:

☐ Updated Bond N/A

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

To be completed by the Contractor:

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

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

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

Contractor's Authorized Representative:  Date: January 8, 2024

Signature

Please return to the City of Port Orange as follows:

Department: Engineering Department

Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager

Fax: (386) 756-5370

E-Mail: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

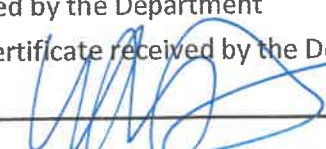
☒ Renewal Accepted by the Department

☐ Bond received by the Department

OR

☒ Bond not applicable

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

City Manager: 

Date: 1/13/2025

Original Signed Form Must Be Returned to the City Clerk



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: Mead and Hunt, Inc. ("Contractor")

Name of Contact Person: Brad Blais, Vice President

Mailing Address: 2440 Deming Way
Middleton, WI 53562-1562

E-Mail Contact Address: Brad.blais@meadhunt.com

Phone: (386) 761-6810 Fax: n/a

☒ Standard Contract for Service CA No. 7761

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2026 To: January 17, 2027

Contractor to Provide to City:

☐ Updated Bond

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

☒ Human Trafficking Affidavit

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: _____ Date: 11/5/2025

Signature

Please return to the City of Port Orange as follows:

Department: Engineering Department

Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager

Fax: (386) 756-5370

E-Mail: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

☒ Renewal Accepted by the Department

☐ Bond received by the Department

OR

☒ Bond not applicable

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

City Manager: _____

Date: 12/17/2025

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF Florida §
§
COUNTY OF Volusia §

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

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

Further Affiant sayeth not.

Date: November 5, 2025

Signed: 
Print Name: Brad Blais
Title: Vice President

SUBSCRIBED AND SWORN before me by means of ☒ physical presence or ☐ online notarization on the 5 day of November, 2025 by Brad Blais as VP on behalf of Mead + Hunt who is personally known to me or who has produced _____ as identification.

(Notary Seal)


KAREN GIMBEL
Notary Public
State of Florida
Comm# HH680781
Expires 5/28/2029
Notary Public, State of _____
Printed name, commission and expiration of commission term



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/24/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Holmes Murphy & Associates 2727 Grand Prairie Parkway Waukegan IA 50263	CONTACT NAME: Christina Hess PHONE (A/C, No, Ext): 612-322-6071 E-MAIL ADDRESS: chess@holmesmurphy.com	FAX (A/C, No):
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : XL Specialty Insurance Company		37885
INSURER B : Zurich Captive		16535
INSURER C : American Guarantee & Liability Ins. Co.		26247
INSURER D : Zurich American Insurance Company		16535
INSURER E :		
INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 666477907**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Cont Liab Per ☒ Policy Form/XCU GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GLO138723204	7/1/2026	7/1/2027	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			BAP138723104	7/1/2026	7/1/2027	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			AUC095226004	7/1/2026	7/1/2027	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WC138723304	7/1/2026	7/1/2027	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D A	Property Professional Liability (Claims-Made)			CPP182316704 DPR5059327	7/1/2026 7/1/2026	7/1/2027 7/1/2027	Bldg/BPP: \$20,012,427 Per Claim: \$10,000,000 Per Aggregate: \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RFSQ 21-03 MASTER CONTRACT

Additional Insured only if required by written contract with respect to General Liability, Automobile Liability and Umbrella/Excess Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory: City of Port Orange and Others as required by written contract.

Waiver of Subrogation only if required by written contract with respect to General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability applies in favor of: City of Port Orange and Others as required by written contract.

General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation Policies include an endorsement providing 30 days' notice of cancellation will be furnished to the certificate holder.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange
1000 City Center Circle
Port Orange FL 32129

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. GLO 1387232-04

Effective Date: 07/01/2026

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a.** The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b.** The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1)** Your ongoing operations, with respect to Paragraph **1.a.** above; or
- (2)** "Your work", with respect to Paragraph **1.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **1.**, insurance afforded to such additional insured:

- (a)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a.** The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b.** The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1)** Your acts or omissions; or
- (2)** The acts or omissions of those acting on your behalf,

in the performance of:

- (a)** Your ongoing operations, with respect to Paragraph **2.a.** above; or
- (b)** "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

- (i)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
 - (ii)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.
- 3.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:
- a.** Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
 - b.** With respect to ongoing operations (if no form is specified),
- such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1)** Your acts or omissions; or
- (2)** The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

- (a)** Only applies to the extent permitted by law;
 - (b)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
 - (c)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.
- 4.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:
- a.** Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
 - b.** With respect to the "products-completed operations hazard" (if no form is specified),
- such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

- (1)** Only applies to the extent permitted by law;
- (2)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3)** Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (4)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- B.** Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C.** Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

- D.** Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

- E.** This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F.** Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.



Coverage Extension Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. BAP 1387231-04

Effective Date: 07/01/2026

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in **B. Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in **B. Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
 - (1) Overdue lease or loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous leases or loans.

F. Towing and Labor

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" that is a "private passenger type", light truck or medium truck is disabled. However, the labor must be performed at the place of disablement.

As used in this provision, "private passenger type" means a private passenger or station wagon type "auto" and includes an "auto" of the pickup or van type if not used for business purposes.

G. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
 - (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
 - (1) Personal property owned by an "insured"; and
 - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
 - (1) The reasonable cost to replace; or
 - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
 - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
 - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
 - (3) Paintings, statuary and other works of art.
 - (4) Contraband or property in the course of illegal transportation or trade.
 - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

J. Tapes, Records and Discs Coverage

- 1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
- 2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

K. Airbag Coverage

The Exclusion in Paragraph B.3.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

M. Temporary Substitute Autos – Physical Damage

1. The following is added to **Section I – Covered Autos**:

Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
 2. Repair;
 3. Servicing;
 4. "Loss"; or
 5. Destruction.
2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

Temporary Substitute Autos – Physical Damage

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

N. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

O. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

P. Employee Hired Autos – Physical Damage

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

Q. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

R. Hired Auto – World Wide Coverage

Paragraph **7.b.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere else in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

S. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

T. Expected Or Intended Injury

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

U. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

V. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

W. Return of Stolen Automobile

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Waiver Of Subrogation (Blanket) Endorsement



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem	Return Prem.
GLO 1387232-04	07/01/2026	07/01/2027	07/01/2026		\$	\$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition**:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT
WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION
BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU AND FOR THAT PERSON
AND/OR ORGANIZATION

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement

Effective Policy No WC 1387233-04

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by _____

2. **Electronic data** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 3. **Loss** means those sums actually paid that the **insured** is legally obligated to pay as damages for the settlement or satisfaction of a claim because of injury or offense, after making proper deductions for all recoveries and salvage. However:
 - a. Under **Coverage A**:
 - (1) **Loss** also includes defense expenses and supplementary payments if **underlying insurance** includes defense expenses and supplementary payments in the Limits of Insurance; and
 - (2) **Loss** does not include defense expenses and supplementary payments if **underlying insurance** does not include defense expenses and supplementary payments in the Limits of Insurance.
 - b. Under **Coverage B**, **loss** does not include defense expenses and supplementary payments.
 4. **Other insurance** means a policy of insurance providing coverage that this policy also provides. **Other insurance** includes any type of self-insurance or other mechanisms by which an **insured** arranges for funding of legal liabilities.

Other insurance does not include **underlying insurance** or a policy of insurance specifically purchased to be excess of this policy providing coverage that this policy also provides.
 5. **Pollutants** mean any man-made or naturally occurring solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smoke; vapor; soot; fumes; acids; alkalis; chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
 6. **Suit** means a civil proceeding in which injuries or damages to which this insurance applies are alleged. **Suit** includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the **insured** must submit pursuant to law or contract or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the **insured** submits with our consent.
 7. **Underlying insurance** means the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy. We will only be liable for amounts in excess of the Limits of Insurance shown in the Schedule of Underlying Insurance for any **underlying insurance**.
- B. The following definitions are applicable to **Coverage A** only:
1. **Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.
 2. **Insured** means:
 - a. You;
 - b. Any person or organization included as an **insured** in **underlying insurance**; and
 - c. Any person or organization qualifying as an additional **insured** in **underlying insurance** but only to the same extent that such person or organization is an additional **insured** under such **underlying insurance**.
 3. **Non-Admitted Jurisdiction** means:
 - a. Any country or political subdivision in which we are not licensed or permitted to insure risks and where doing so would violate the insurance laws and regulations of such jurisdiction; or
 - b. Any country or political subdivision where we are prevented by law from investigating, defending or settling an **occurrence** or **suit**.
 4. **Occurrence** means a covered event as defined in **underlying insurance**.
 5. **Qualified Entity** means any entity, person or organization that is not an **insured** under this policy and would qualify as an **insured** under this policy, but for the fact that the entity is registered, domiciled or has ongoing operations in a **non-admitted jurisdiction**.

Nothing herein will be construed to make this policy subject to the terms, conditions and limitations of such **other insurance**.

14. Premium

The premium for this policy as stated in Item **6.** of the Declarations is a flat premium. It is not subject to adjustment unless an endorsement is attached to this policy.

15. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first **Named Insured**, this insurance applies:

- a. As if each **named insured** were the only **named insured**; and
- b. Separately to each **insured** against whom claim is made or **suit** is brought.

16. Terms Conformed to Statute

The terms of this policy which are in conflict with the statutes, laws, ordinances or regulations in any country, jurisdiction, state or province where this policy is issued are amended to conform to such statutes, laws, ordinances or regulations. If we are prevented by law or statute from paying on behalf of the **insured**, then we will, where permitted by law or statute, indemnify the **insured**.

17. Transfer of Rights of Recovery Against Others to Us

- a. If the **insured** has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The **insured** must do nothing after the **loss** to impair them. At our request, the **insured** will bring **suit** or transfer those rights to us and help us enforce them.

However, if any **insured** is required by a written contract or agreement which is executed before a **loss** to waive their rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations for which the **insured** has not waived their rights of recovery by contract.

- b. Any amount recovered will be apportioned in the inverse order of payment of **loss** to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

18. Transfer of Your Rights and Duties

Your rights and duties under this insurance may not be transferred without our written consent. If you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties but only with respect to that property.

19. When Loss is Payable

Coverage under this policy will not apply until the **insured**, or the **insured's** underlying insurer has paid or is legally obligated to pay the full amount of the Underlying Limits of Insurance or **Retained Limit**.

When the amount of **loss** is determined by an agreed settlement or on a final judgment against an **insured** obtained after an actual trial, we will promptly pay on behalf of the **insured** the amount of **loss** covered under the terms of this policy. The first **Named Insured** will promptly reimburse us for any amount within the **Retained Limit** paid by us.

20. Violation of Economic or Trade Sanctions

If coverage for a claim or **suit** under this policy is in violation of any economic or trade sanctions of the United States of America then coverage for that claim or **suit** will be null and void.

B. The following Condition is applicable to **Coverage A** and **Coverage B**:

1. Notice of Occurrence, Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an **occurrence** which may result in damages covered by this policy.

To the extent possible, notice will include:

- (1) How, when and where the **occurrence** took place;



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6c) Approval of Amendment No. 1 to Task Authorization No. 5 to Dredging & Marine Consultants, LLC for Day Dock at Riverwalk Park Bidding Assistance, Construction Management, and Inspection

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve Amendment No. 1 to Task Authorization No. 5 to Dredging & Marine Consultants, LLC for an amount not to exceed \$56,430.00, thereby revising the total amount to not exceed \$240,430.00; and authorizing the Mayor and City Clerk to execute all necessary documents.

SUMMARY: Dredging & Marine Consultants, LLC (DMC) completed the design and permitting for the Day Dock at Riverwalk Park project in Fall 2025 pursuant to Task Authorization No. 5, which was approved by City Council in Fall 2023. The term of Task Authorization No. 5 continues until the completed project has been accepted by the City.

To facilitate putting the project out to bid this fall, with construction anticipated to begin in early 2027, additional services are being requested under Amendment No. 1 to Task Authorization No. 5 for bidding assistance, construction management, inspection, and support to the City with Florida Inland Navigation District (FIND) grant reporting. DMC will perform these additional services for a lump sum fee of \$56,430.00. Funds for the additional services are budgeted in the Day Dock at Riverwalk Park project.

The design plans for the Day Dock have been completed, and all necessary permits have been obtained. The project includes a floating dock oriented perpendicular to the shoreline, providing mooring for up to ten (10) vessels up to 35 feet in length, with the potential for future expansion as demand increases. The dock is also designed to accommodate a future water taxi stop. The project includes a dredging profile to establish a navigational access channel connecting the day dock to the adjacent deep-water channel leading to the Intracoastal Waterway (ICW), as well as the installation of channel markers from the dock to the existing marked channel.

The estimated construction cost for the Riverwalk Park Day Dock project is \$1,620,520. The City initially requested \$810,260, or 50% of the estimated construction cost, in funding from FIND. In Fall 2025, FIND awarded the City \$405,130, representing 25% of the total construction cost, due to limited funding availability and the high number of qualified projects submitted.

Staff subsequently worked with FIND to submit a second application in March 2026

requesting an additional \$405,130. If awarded, the additional funding would increase the total FIND funding to \$810,260, which is 50% of the estimated construction cost. FIND is anticipated to announce the grant awards in late September 2026.

Construction is anticipated to begin in early 2027, with the goal of completing the project prior to the September 30, 2027 expenditure deadline for the initial FIND grant.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Dredging and Marine Consultants-Amendment 1 to Task Authorization No 5	Dredging and Marine Consultants-Amendment 1 to Task Authorization No 5.pdf
2.	DMC Proposal - Bidding and Construction Administration Services for Day Dock at Riverwalk Park	DMC Proposal - Bidding and Construction Administration Services for Day Dock at Riverwalk Park.pdf
3.	Dredging & Marine Consultants, LLC Task Auth No. 5	Dredging & Marine Consultants, LLC Task Auth No. 5.pdf

Margaret Tomlinson	Created/Initiated - 08/27/2026
Tim Burman	Approved - 08/28/2026
Catrina Wilson	Approved - 08/28/2026
Sue Wang	Approved - 08/28/2026
Matthew Jones	Approved - 09/04/2026
Wayne Clark	Approved - 09/08/2026
Amanda Bonin	Final Approval - 09/08/2026

**AMENDMENT NO. 1 TO TASK AUTHORIZATION NO. 5
OF MASTER CONTRACT FOR ENGINEERING SERVICES DATED FEBRUARY 14, 2017**

THIS AMENDMENT NO. 1 ("Amendment No. 1 to Task Authorization No. 5") 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 **DREDGING & MARINE CONSULTANTS, LLC** ("Engineer" and/or "DMC"), a Florida limited liability corporation, whose principal address is 4643 South Clyde Morris Boulevard, Unit 302, Port Orange, Florida 32129, collectively the "Parties."

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

WHEREAS, the Parties executed a City of Port Orange Renewal Form to continue services for the period through February 14, 2022; and

WHEREAS, the Parties executed a City of Port Orange Renewal Form to continue services for the period through February 14, 2024; and

WHEREAS, on the 17th day of October 2023, the Parties entered into Task Authorization No. 5 to the Master Contract for Engineering Services relating to the Design and Permitting Services for a Day Dock at Riverwalk Park ("Task Authorization No. 5"), with services to be commenced upon written Notice to Proceed issued by the City to the Contractor and continuing until the final constructed project has been accepted by the City, in an amount not to exceed \$184,000.00; and

WHEREAS, a Notice to Proceed was issued December 22nd, 2023; and

WHEREAS, in order to facilitate putting the project out to bid, with construction anticipated to begin in early 2027, the Parties desire to amend the scope the Task Authorization No. 5 under Amendment No. 1 to Task Authorization No. 5 to add bidding assistance, construction management, inspection, and support to the City with Florida Inland Navigation District (FIND) grant reporting and to amend the amount of Task Authorization No. 5 from \$184,000.00, increasing the amount by \$56,430.00, for a revised total amount not to exceed \$240,430.00; and

WHEREAS, the Port Orange City Council has determined that the execution of this Amendment No. 1 to Task Authorization No. 5 is beneficial to the citizens of the City of Port Orange.

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

The foregoing recitals are true and correct and incorporated herein.

1. The scope of Task Authorization No. 5 is hereby amended to add bidding assistance, construction management, inspection, and support to the City with Florida Inland Navigation District (FIND) grant reporting, and as more specifically described in DMC Day Dock at Riverwalk Park; Professional

Services for Bidding Assistance and Construction Management & Inspection letter dated June 19, 2026, attached hereto as Exhibit "1."

2. In return for the services identified above, City agrees to increase the amount of the Task Authorization No. 5 from \$184,000.00 by an amount of \$56,430.00, for a revised total amount not to exceed \$240,430.00.

3. Counterparts. This Amendment No. 1 to Task Authorization No. 5 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 Amendment No. 1 to Task Authorization No. 5 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 Amendment No. 1 to Task Authorization No. 5.

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

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Amendment No. 1 to Task Authorization No. 5 on the day and year stated hereinafter.

Witnesses:

DREDGING & MARINE CONSULTANTS, LLC

Printed Name: _____

By: _____

Shailesh K. Patel, 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”

Amendment No. 1 to Task Authorization No. 5

Consisting of 1 Page

June 19, 2026

Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle

RE: Day Dock at Riverwalk Park; Professional Services for Bidding Assistance and Construction Management & Inspection.

Ms. Tomlinson:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to provide bidding assistance and construction management & inspection services for the construction of the Day Dock at Riverwalk Park. The proposed services are based on the previously approved design completed under Contract No. CA5672, Task Authorization No. 5.

Task 1: Bidding Assistance & Construction Phase Services - DMC will assist the City with the following:

- Bid document preparation and advertisement support.
- Provide City Procurement Department with design documents and permits required for bidding
- Attendance at a pre-bid meeting.
- Provide written responses to contractor questions during bidding, to be issued in the form of addenda as necessary.
- Provide evaluation and Contractor Letter of Recommendation, if required.
- Support City Grants Manager with FIND grant reporting support.
- Attendance at a pre-construction meeting with the selected contractor to discuss critical items, required submittals, scheduling, and project coordination.
- Review shop drawings, product data, samples, and other contractor submittals required by the Contract Documents.
- Review of pay requests and change orders.
- Response to contractor Requests for Information during construction.
- Provide weekly site visits to monitor progress and coordinate with the contractor and City staff.
- Provide Inspection reports
- Engineering assistance during critical stages of construction.
- Attend substantial completion walkthrough and create a punch list of items to complete.
- Review and submittal of final as-builts to the regulatory agencies once construction is complete.
- Provide final close-out documents, warranty documents, etc, as applicable.

Budget: DMC will perform the above services for a Lump Sum fee of \$56,430.00. DMC will invoice the City monthly for services rendered.

Schedule: We anticipate completion of Task 1 within seven (7) months from start of construction.

Thank you for this opportunity and we look forward to working with you. Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,
Dredging & Marine Consultants, LLC



Shailesh K. Patel, MSc, CPSSc.
Senior Project Manager

June 19, 2026

Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle

RE: Day Dock at Riverwalk Park; Professional Services for Bidding Assistance and Construction Management & Inspection.

Ms. Tomlinson:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to provide bidding assistance and construction management & inspection services for the construction of the Day Dock at Riverwalk Park. The proposed services are based on the previously approved design completed under Contract No. CA5672, Task Authorization No. 5.

Task 1: Bidding Assistance & Construction Phase Services - DMC will assist the City with the following:

- Bid document preparation and advertisement support.
- Provide City Procurement Department with design documents and permits required for bidding
- Attendance at a pre-bid meeting.
- Provide written responses to contractor questions during bidding, to be issued in the form of addenda as necessary.
- Provide evaluation and Contractor Letter of Recommendation, if required.
- Support City Grants Manager with FIND grant reporting support.
- Attendance at a pre-construction meeting with the selected contractor to discuss critical items, required submittals, scheduling, and project coordination.
- Review shop drawings, product data, samples, and other contractor submittals required by the Contract Documents.
- Review of pay requests and change orders.
- Response to contractor Requests for Information during construction.
- Provide weekly site visits to monitor progress and coordinate with the contractor and City staff.
- Provide Inspection reports
- Engineering assistance during critical stages of construction.
- Attend substantial completion walkthrough and create a punch list of items to complete.
- Review and submittal of final as-builts to the regulatory agencies once construction is complete.
- Provide final close-out documents, warranty documents, etc, as applicable.

Budget: DMC will perform the above services for a Lump Sum fee of \$56,430.00. DMC will invoice the City monthly for services rendered.

Schedule: We anticipate completion of Task 1 within seven (7) months from start of construction.

Thank you for this opportunity and we look forward to working with you. Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,
Dredging & Marine Consultants, LLC



Shailesh K. Patel, MSc, CPSSc.
Senior Project Manager

TASK AUTHORIZATION NO. 5
Standard Contract for Services dated February 14, 2017
Between the City of Port Orange, Florida and Dredging & Marine Consultants, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **DREDGING & MARINE CONSULTANTS, LLC**, a Florida corporation with its principal place of business at 4643 South Clyde Morris Boulevard, Port Orange, Florida 32129 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated February 14, 2017, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide Design and Permitting Services for a Day Dock at Riverwalk Park, and as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall commence services upon issuance of a written Notice to Proceed issued and executed by the City to the Contractor, and shall continue until the final constructed project has been accepted by the City.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$184,000.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and

current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

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

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

Witnesses:

DREDGING & MARINE CONSULTANTS, LLC

Natalie Tyada
Printed Name: Natalie Tyada

Dhilar Patel
Printed Name: Dhilar Patel

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

Date: 10-16-2023

CITY OF PORT ORANGE

By: _____

Donald O. Burnette, Mayor

Date: _____

10/17/2023

ATTEST:

By: _____

Robin L. Fenwick, MMC, City Clerk

Date: _____

10/17/2023



l

EXHIBIT “1”

Contractor's Quote

Consisting of 5 Pages

August 4 , 2023

Margaret Tomlinson
Construction and Engineering Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**RE: Engineering and Permitting Services for the Riverfront Day (Transient)
Dockage Scope, Budget and Schedule**

Ms. Tomlinson:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to provide marine and engineering services for the Riverfront Day (transient) Dockage as part of our Continuing Services Contract 2006-21 with the City of Port Orange (CITY) based on the following project understanding:

Project Understanding: As part of the comprehensive Riverfront Park development, enhancement and public access, the City of Port Orange (CITY) is seeking to build a Day (transient) Docking facility. The intent of this Day Dock facility is to provide recreational boaters access to the CITY's landward park amenities. The Day Docks are to be used as daytime only mooring for Volusia County residents and those who utilize the Intracoastal Waterway (ICW), which abuts the Day Dock facility location. The following proposal is intended to provide navigational access from the ICW navigation channel to this facility. The current intent is to develop a phased approach that will ultimately allow the CITY to have at least up to 35-foot boat vessels. We will establish a dock parallel to the shoreline for mooring of up to ten (10) vessels with a potential to add more slips as demand increases. We will survey significant area of the waterways to identify a navigational access channel to the day dockage facility and will evaluate any dredging needs to meet a minimum depth of -5 ft Mean Low Water. The following tasks are proposed to provide safe navigational access and to design the Day (transient) Dock system:

Scope of Services: DMC will assist the City of Port Orange with the following tasks as indicated below:

Task 1: Site Investigations & Grant Assistance:

- Assist CITY with matching other grant applications such as FWC Boating Infrastructure Grant Program, and grant reporting.
- Conduct a document search for historical design and survey at this location the CITY may have in its archives that will benefit the design and environmental work.
- Conduct up to three Standard Penetrating Test borings to a depth of 40 feet below sediment surface.
- Collect and test up to five sediment and water column samples for physical and chemical parameters for material dredging and disposal options. Chemical parameters will include the typical total metals, petroleum and oil and any other testing recommended by the regulatory agencies.
- Conduct hydrographic survey from ICW channel to proposed location of day dockage facility.
- Coordinate with Florida Inland Navigation District (FIND) to identify their channel location and right-of-way limits.
- Coordinate with local and state agencies with regards to resources of concern and any existing Sovereign Submerged Land Lease information.
- Coordinate site ownership, boundary survey, hydrographic and topographic land surveys of the project area that may have been recently completed so that additional surveys can be determined.
- Conduct resources survey.

Task 2 – Engineering:

- DMC staff will conduct a site visit to determine visual water marks and erosional features, tidal influence and any visible shoaling, resources and their condition.
- Design the dockage to meet the minimum CITY criteria for wind.
- Evaluate safety features.
- Design an estimated 8 to 10-foot wide dock, easily accessible and usable for boaters.
- Determine appropriate live loading to withstand usage and for maintenance and operations.
- Docks will be ADA accessible and compliant and hand-railing will be designed as determined by the CITY.
- Landward connection to existing sidewalk will be either wood or concrete to match the existing sidewalk design.
- Identify and design shoreline protection options that may be used to off-set any impacts.
- Shoreline grading and minor landscaping will be designed with City staff input.
- Identify best option for access channel location and depth of dredging, recommended option for hydraulic or mechanical dredging, temporary off-load sites and permanent disposal site.
- Design lighting of dock structure, if desired by CITY.
- Conduct a 30%, 60% and 90% review with the CITY staff.
- Generate a construction ready set of plans and technical specifications for bidding.
- Provide an Engineer's Probable cost for Construction of project.

Task 3 – Permitting

- Conduct a pre-application meeting with both State and Federal regulatory agencies to determine the necessary field testing, resource impacts and any mitigation requirements that could affect the design.
- Complete and submit an Environmental Resource Permit (ERP) application.
- Develop a mitigation plan if required by the permitting process, our objective will be to minimize and avoid the need for mitigation, where possible.
- Conduct all site land and water resource surveys for the project to utilize for permit submittal.
- DMC will respond to any additional Request for Additional Information (RAIs) from the State and Federal regulatory agencies until permits are secured.
- Conduct a flushing study, as may be required by the regulatory agencies.
- **Permit fees will be paid directly by the CITY to the regulatory agencies;** however, DMC will assist in coordinating this effort.

Task 4 – Bidding & Construction Inspection Management

- This task is not included in this scope, however the CITY retains the option to utilize DMC services with regards to bid preparation, bidding and assistance to conduct pre-bid meetings, respond to Contractor Request For Information during the bidding process and assist the City with Construction Management and Grant management and close-out. It is anticipated that these services will be part of the Construction phase and incorporated into future grants and funding.

Budget: This work will be completed for a not-to-exceed lump sum fee of **\$184,000**. If any additional work is required, the additional services and cost will be discussed with the Client and provided on the agreed hourly rates. The costs per task are as follows:

- 1. Site Investigations & Grant Assistance – \$59,160.00**
- 2. Engineering – \$68,320.00**
- 3. Permitting – \$56,520.00**

Schedule: These services will be completed within 300 days from the date of Notice-to-Proceed; however, regulatory agency timeline and request for information may delay final design deliverable.

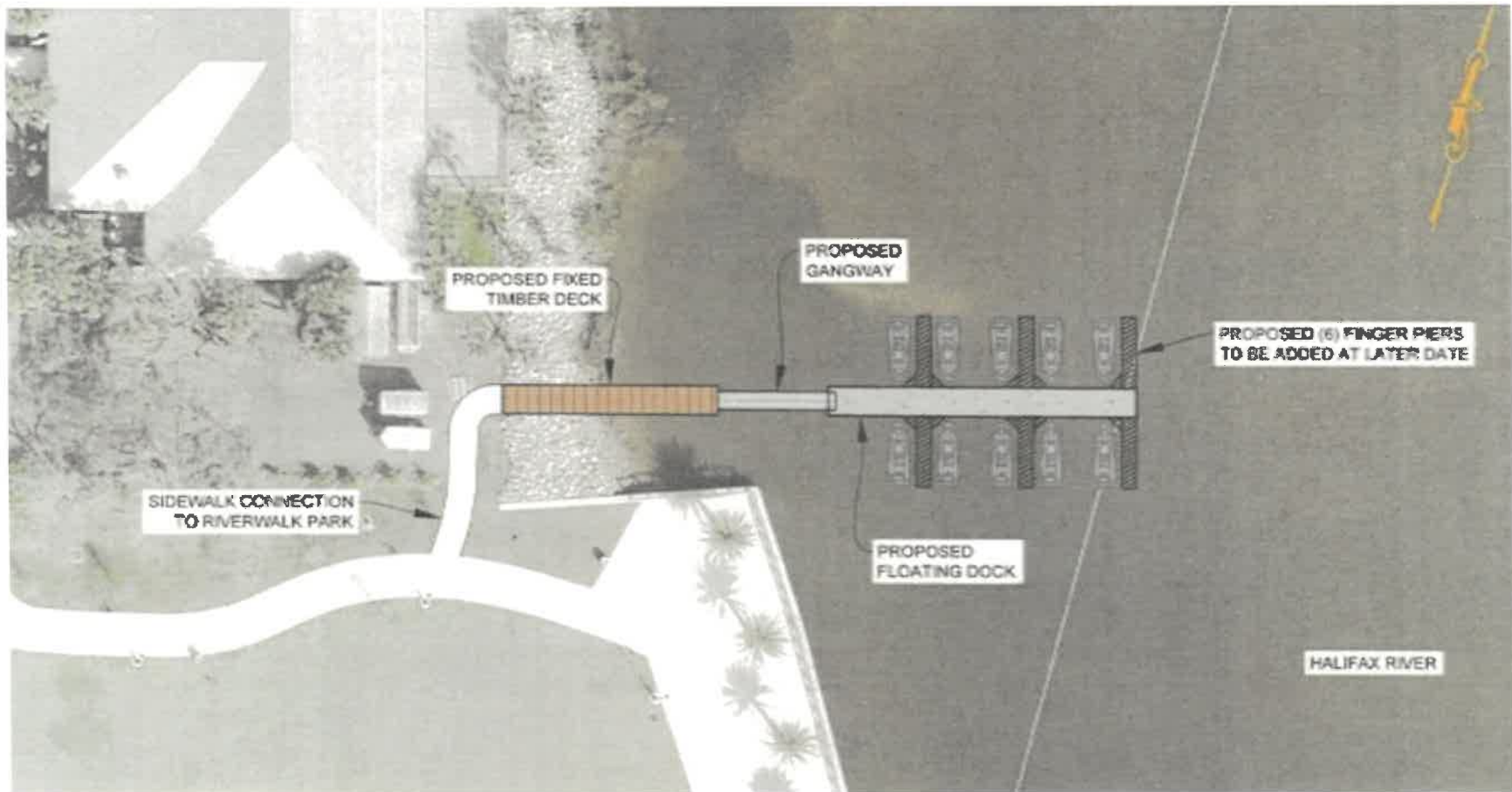
Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,

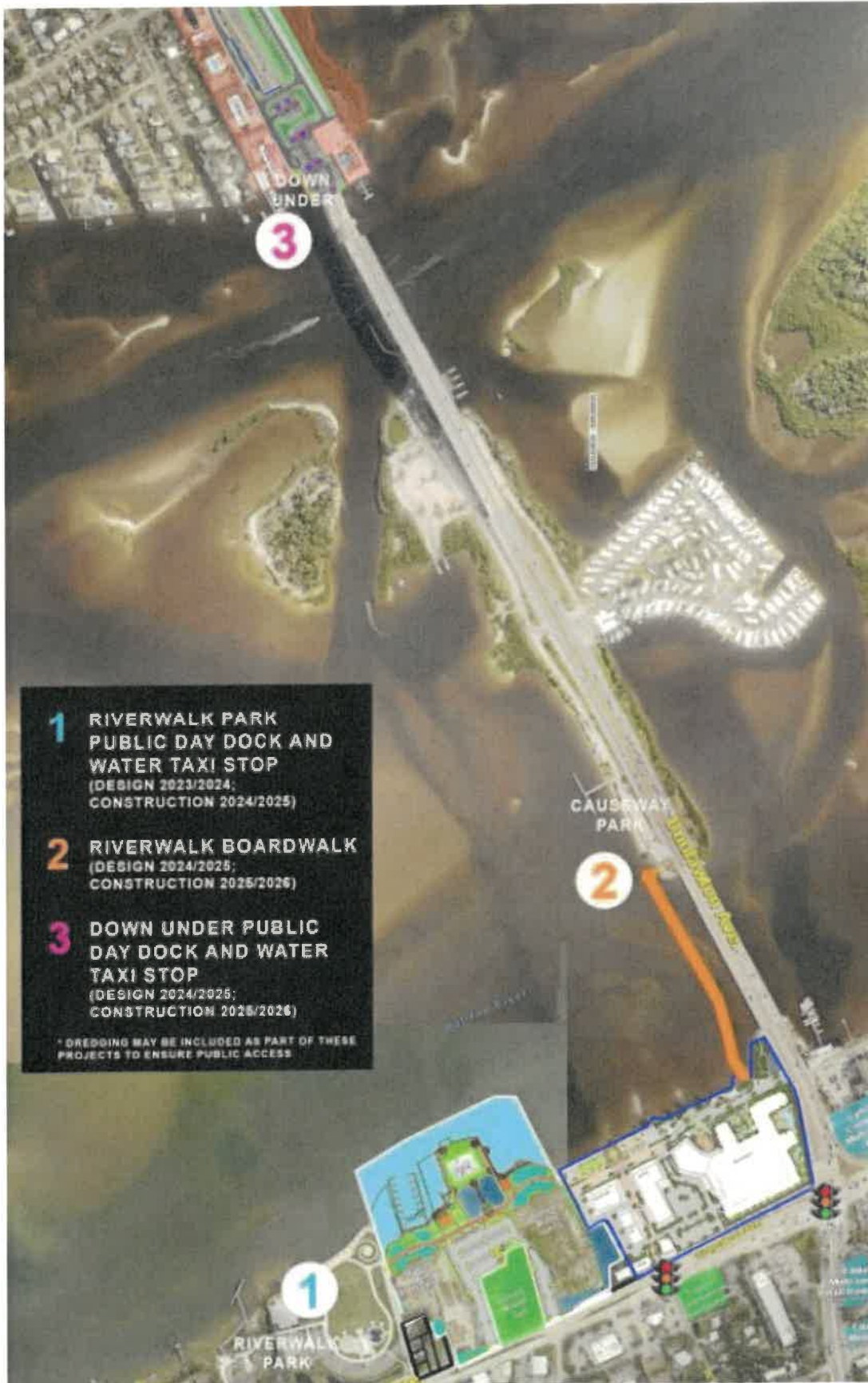
Dredging and Marine Consultants, LLC



Shailesh K. Patel, M.Sc., CPSSc.
Senior Project Manager



Proposed concept of day dock at Riverwalk Park



- 1** RIVERWALK PARK
PUBLIC DAY DOCK AND
WATER TAXI STOP
(DESIGN 2023/2024;
CONSTRUCTION 2024/2025)
- 2** RIVERWALK BOARDWALK
(DESIGN 2024/2025;
CONSTRUCTION 2025/2026)
- 3** DOWN UNDER PUBLIC
DAY DOCK AND WATER
TAXI STOP
(DESIGN 2024/2025;
CONSTRUCTION 2025/2026)

* DREDGING MAY BE INCLUDED AS PART OF THESE
PROJECTS TO ENSURE PUBLIC ACCESS



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6d) Approval of Task Authorization No. 30 with Kimley-Horn & Associates, Inc. (RFSQ #21-03) for the Ponce Inlet Master Lift Station Rehabilitation

DEPARTMENT: Engineering

RECOMMENDED MOTION: Move to approve Task Authorization No. 30 with Kimley-Horn & Associates, Inc. (CA7763) for the Ponce Inlet Master Lift Station Design Phase Services for an amount not to exceed \$299,961.72; and authorize the Mayor and City Clerk to execute all contract documents.

SUMMARY: Engineering Staff requests approval of Task Authorization No. 30 with Kimley-Horn & Associates, Inc. under the Master Contract for Professional Engineering Services (CA7763) for design phase services related to the Ponce Inlet Master Lift Station Rehabilitation project.

The City owns and operates the Ponce Inlet sewer system. The master lift station, originally constructed in 1994 and last upgraded in 2006, serves approximately 1,700 residences in Ponce Inlet and Wilbur-by-the-Sea. The project will include mechanical and electrical upgrades to improve resiliency and operational efficiency. It will also replace the ductile iron force main along S. Peninsula Drive to reduce the risk of system failures and potential environmental impacts.

The City received a \$1.4 million legislative appropriations grant to help fund construction once design and permitting are complete. The project is included in the approved Capital Improvement Program (CIP) budget.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley-Horn - Task No 30 - Ponce Inlet LS195 Design	Kimley-Horn - Task No 30 - Ponce Inlet LS195 Design.pdf
2.	DRAFT - Kimley-Horn - Task No 30 - Ponce Inlet LS195 Design	DRAFT - Kimley-Horn - Task No 30 - Ponce Inlet LS195 Design.docx
3.	Ponce Master LS Final scope	Ponce Master LS Final scope.pdf
4.	EXECUTED Kimley-Horn Contract CA7763	EXECUTED Kimley-Horn Contract CA7763.pdf
5.	Executed Kimley-Horn Renewal 1	Executed Kimley-Horn Renewal 1.pdf

6.	EXECUTED - Kimley-Horn Renewal 2	EXECUTED - Kimley-Horn Renewal 2.pdf
7.	City of Port Orange_Kimley-Horn and Associates Inc. 4.1.2027 All	City of Port Orange_Kimley-Horn and Associates Inc. 4.1.2027 All.pdf
8.	Kimley-Horn - HTA	Kimley-Horn - HTA.pdf

Julia Wiggins	Created/Initiated - 08/19/2026
Richard Colby	Approved - 08/19/2026
Junos Reed	Approved - 08/25/2026
Sue Wang	Approved - 08/25/2026
Matthew Jones	Approved - 09/08/2026
Wayne Clark	Final Approval - 09/08/2026

TASK AUTHORIZATION NO. 30
Master Contract for Services dated, January 18, 2022
Between the City of Port Orange, Florida and Kimley-Horn and
Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to the **Ponce Inlet Master Lift Station (LS195) Rehabilitation** as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within **365** of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed **\$299,961.72**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Scott Stiltner, Mayor

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

EXHIBIT “1”

Engineer’s Proposal

Consisting of 4 Pages

PROPOSAL FOR PONCE MASTER LIFT STATION REHABILITATION

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the City of Port Orange Ponce Master Lift Station. City staff requested that Kimley-Horn provide a proposal to evaluate either converting the existing wet pit/dry pit lift station to a submersible lift station or keep the wet pit/dry pit orientation. Following the evaluation, Kimley-Horn will provide final design from the selected option. This scope also includes a structural evaluation of the existing structure and recommended improvements. Electrical, HVAC, and instrumentation and controls are also provided by a subconsultant. Approximately 4,000 linear feet of existing 8-in force main will also be replaced. The following is our understanding of the specific scope of work that has been requested by City staff.

- Kimley-Horn will prepare hydraulic calculations to determine the new pump design pump rate and total dynamic head conditions.
- Kimley-Horn will prepare a preliminary design memo evaluating the conversion of the existing wet pit/dry pit layout to submersible pumps, or keeping the existing layout as-is and replacing the existing pumps. The report will include the evaluation of wet well rehabilitation, lift station bypass plan, and possible abandonment of the existing dry pit/pump room. A structural evaluation of the building will be summarized in the design memo.
- Kimley-Horn will provide final design services for the lift station based on the recommendations from the preliminary design memo.
- Kimley-Horn will provide final design services for the replacement of approximately 4,000 LF of existing 8-in force main along South Peninsula Drive between the master lift station and Inlet Harbor Rd. This includes the tie-in of approximately 8 grinder lift stations.
- Kimley-Horn will enlist the services of an electrical engineering subconsultant to perform the required electrical design for the proposed lift station. This work will include the following:
 - Demolition of the existing electrical equipment within the pump station including panelboards, variable frequency drives, HVAC equipment, plumbing fixtures, generator, pumps and ancillary equipment.
 - Electrical design to convert existing office room to an electrical room.
 - Remove and replace the existing standby generator with an appropriately sized generator.
 - Modification for the existing pump station building including lighting, lightning protection, and ancillary equipment.
 - HVAC design includes dedicated air conditioning for the new electrical room.

- HVAC supply and exhaust improvements for the pump station operating floor and dry-pit.
- Instrumentation and Control Systems services for the pump station.

Specific Scope of Basic Services:

Task 1: Preliminary Design

- A. Kimley-Horn will contract directly with a survey subconsultant to prepare a right of way, topographic and project boundary survey for the proposed force main route between the pump station and Inlet Harbor Road. The survey will be prepared in Florida State Plane Coordinates (Zone West) and North American Vertical Datum of 1988 (NAVD 88).
- B. Kimley-Horn will attend a kick-off meeting with the City of Port Orange to review the project scope and discuss project elements to be included within the design plans.
- C. Kimley-Horn will evaluate the lift station buildout demand conditions and perform a SewerCAD hydraulic analysis of the collection system to determine the design head conditions for the new lift station pumps.
- D. Kimley-Horn will enlist the services of an electrical engineering subconsultant to perform the required electrical design for the proposed lift station. This work will include the design of new variable frequency drives (VFDs), controls, SCADA system, and new emergency generator.

Task 2: 60% Design

- A. Kimley-Horn will prepare plan sheets, notes, and details on 11"x17" half size sheets. The 60% plans will include the following sheets necessary to convey the intent and scope of the project for the purposes of construction.
 - Cover and general sheets
 - Civil plan sheets
 - Proposed lift station site modifications plan sheets
 - Proposed plan sheets for force main design (approximately 10 plan and profile sheets)
 - Mechanical lift station design sheets
 - Utility Design Detail sheets
- B. Kimley-Horn will submit the design plans, specifications, and OPC for the City's review at 60% completion.
- C. Kimley-Horn will attend one (1) 60% review meeting with City staff to review City comments.

Task 3: Final Design

- A. Kimley-Horn will prepare 90% and 100% design plans, specifications, and opinion of probable construction cost (OPC) for the proposed lift station, force main route, and site improvements based on comments from the city on the 60% design deliverable.
- B. Kimley-Horn will submit the design plans, specifications, and OPC for the City's review at 90% and 100% completion.
- C. Kimley-Horn will attend one (1) 90% review meeting with City staff to review City comments.

Task 4: Permitting Services

- A. Kimley-Horn will prepare an FDEP Notification/Application for Constructing A Domestic Wastewater Collection /Transmission System (62-604.300(8)(a)). The scope consists of preparation of one permit application and supporting documents and response to a maximum of two reasonable requests for additional information. All permit application fees will be paid by the City.

Task 5: Bidding Services

- A. Prepare one (1) separate bid package consisting of plans, permits, and specifications (in CSI or EJCDC format) to be included in the City's bid package.
- B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.
- C. Respond to Requests for Information (RFIs) and prepare bid addenda as necessary during the bid process. The City will be responsible for addenda distribution.
- D. Review the bid responses and tabulate the results and provide the City with a written bid tabulation record along with a selection recommendation.

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn will begin services within 7 calendar days upon receipt of an executed agreement. The overall project is expected to be completed within 270 days and will be agreed upon during the project kickoff meeting.

Deliverables:

Deliverables for this project include the following:

- Preliminary Design Memo
- 60% plans, specifications, and opinion of probable costs
- 90% plans, specifications, opinion of probable construction costs
- Bid Ready plans, specifications and final opinion of probable construction costs



Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of \$299,961.72 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

<i>Task</i>	<i>Description</i>	<i>Subconsultant</i>	<i>Kimley-Horn</i>	<i>Lump Sum Fee</i>
1	Preliminary Design	\$18,000	\$32,342.32	
2	60% Design		\$68,492.08	\$68,492.08
3	Final Design	\$75,859.00	\$87,309.62	\$163,168.62
4	Permitting	\$1,907.00	\$3,258.29	\$5,165.29
5	Bidding Services	\$1,983.00	\$10,810.41	\$12,793.41
	SubTotal	\$97,749.00	\$202,212.72	\$299,961.72
Total				\$299,961.72

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____
Joseph P. Mecca, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____

TASK AUTHORIZATION NO. 30
Master Contract for Services dated, January 18, 2022
Between the City of Port Orange, Florida and Kimley-Horn and
Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to the **Ponce Inlet Master Lift Station (LS195) Rehabilitation** as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within **365** of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed **\$299,961.72**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Scott Stiltner, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

PROPOSAL FOR PONCE MASTER LIFT STATION REHABILITATION

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the City of Port Orange Ponce Master Lift Station. City staff requested that Kimley-Horn provide a proposal to evaluate either converting the existing wet pit/dry pit lift station to a submersible lift station or keep the wet pit/dry pit orientation. Following the evaluation, Kimley-Horn will provide final design from the selected option. This scope also includes a structural evaluation of the existing structure and recommended improvements. Electrical, HVAC, and instrumentation and controls are also provided by a subconsultant. Approximately 4,000 linear feet of existing 8-in force main will also be replaced. The following is our understanding of the specific scope of work that has been requested by City staff.

- Kimley-Horn will prepare hydraulic calculations to determine the new pump design pump rate and total dynamic head conditions.
- Kimley-Horn will prepare a preliminary design memo evaluating the conversion of the existing wet pit/dry pit layout to submersible pumps, or keeping the existing layout as-is and replacing the existing pumps. The report will include the evaluation of wet well rehabilitation, lift station bypass plan, and possible abandonment of the existing dry pit/pump room. A structural evaluation of the building will be summarized in the design memo.
- Kimley-Horn will provide final design services for the lift station based on the recommendations from the preliminary design memo.
- Kimley-Horn will provide final design services for the replacement of approximately 4,000 LF of existing 8-in force main along South Peninsula Drive between the master lift station and Inlet Harbor Rd. This includes the tie-in of approximately 8 grinder lift stations.
- Kimley-Horn will enlist the services of an electrical engineering subconsultant to perform the required electrical design for the proposed lift station. This work will include the following:
 - Demolition of the existing electrical equipment within the pump station including panelboards, variable frequency drives, HVAC equipment, plumbing fixtures, generator, pumps and ancillary equipment.
 - Electrical design to convert existing office room to an electrical room.
 - Remove and replace the existing standby generator with an appropriately sized generator.
 - Modification for the existing pump station building including lighting, lightning protection, and ancillary equipment.
 - HVAC design includes dedicated air conditioning for the new electrical room.

- HVAC supply and exhaust improvements for the pump station operating floor and dry-pit.
- Instrumentation and Control Systems services for the pump station.

Specific Scope of Basic Services:

Task 1: Preliminary Design

- A. Kimley-Horn will contract directly with a survey subconsultant to prepare a right of way, topographic and project boundary survey for the proposed force main route between the pump station and Inlet Harbor Road. The survey will be prepared in Florida State Plane Coordinates (Zone West) and North American Vertical Datum of 1988 (NAVD 88).
- B. Kimley-Horn will attend a kick-off meeting with the City of Port Orange to review the project scope and discuss project elements to be included within the design plans.
- C. Kimley-Horn will evaluate the lift station buildout demand conditions and perform a SewerCAD hydraulic analysis of the collection system to determine the design head conditions for the new lift station pumps.
- D. Kimley-Horn will enlist the services of an electrical engineering subconsultant to perform the required electrical design for the proposed lift station. This work will include the design of new variable frequency drives (VFDs), controls, SCADA system, and new emergency generator.

Task 2: 60% Design

- A. Kimley-Horn will prepare plan sheets, notes, and details on 11"x17" half size sheets. The 60% plans will include the following sheets necessary to convey the intent and scope of the project for the purposes of construction.
 - Cover and general sheets
 - Civil plan sheets
 - Proposed lift station site modifications plan sheets
 - Proposed plan sheets for force main design (approximately 10 plan and profile sheets)
 - Mechanical lift station design sheets
 - Utility Design Detail sheets
- B. Kimley-Horn will submit the design plans, specifications, and OPC for the City's review at 60% completion.
- C. Kimley-Horn will attend one (1) 60% review meeting with City staff to review City comments.

Task 3: Final Design

- A. Kimley-Horn will prepare 90% and 100% design plans, specifications, and opinion of probable construction cost (OPC) for the proposed lift station, force main route, and site improvements based on comments from the city on the 60% design deliverable.
- B. Kimley-Horn will submit the design plans, specifications, and OPC for the City's review at 90% and 100% completion.
- C. Kimley-Horn will attend one (1) 90% review meeting with City staff to review City comments.

Task 4: Permitting Services

- A. Kimley-Horn will prepare an FDEP Notification/Application for Constructing A Domestic Wastewater Collection /Transmission System (62-604.300(8)(a)). The scope consists of preparation of one permit application and supporting documents and response to a maximum of two reasonable requests for additional information. All permit application fees will be paid by the City.

Task 5: Bidding Services

- A. Prepare one (1) separate bid package consisting of plans, permits, and specifications (in CSI or EJCDC format) to be included in the City's bid package.
- B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.
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Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn will begin services within 7 calendar days upon receipt of an executed agreement. The overall project is expected to be completed within 270 days and will be agreed upon during the project kickoff meeting.

Deliverables:

Deliverables for this project include the following:

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Method of Compensation:

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<i>Task</i>	<i>Description</i>	<i>Subconsultant</i>	<i>Kimley-Horn</i>	<i>Lump Sum Fee</i>
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Total				\$299,961.72

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____
Joseph P. Mecca, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____



CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, 2022, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, registered to transact business in Florida, whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

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

1. Provision of Services

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

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Schedule of Hourly Billing Rates as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

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

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

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

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

2. Authorization for Services This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "2."

- a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.
- b. No new or additional Task Authorization shall be issued after the original expiration date of this Contract. The extension of this Contract to coincide with the completion of an existing Task Authorization issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Engineer to enter into a new or additional Task Authorization after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization.

3. City Obligations The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

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

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

6. Statement of Engineering Services The Engineer shall:

- (a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;
- (b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;
- (c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.
- (d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);
- (e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:
 - (i) Site Visits/Special Permits The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.
 - (ii) Preliminary Sketches and Opinion of Probable Construction Costs The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.
 - (iii) Working Drawings and Specifications After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

- (iv) Original Drawings - Final Plans Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.
- (v) Revision of Final Drawings and Specifications The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.
- (vi) Bidding The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. Responsibility of the Engineer The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

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

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

10. Modifications to Scope of Work/Change Orders

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

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

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

11. Subcontractors or Sub-Subcontractors

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors or Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

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

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

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

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

- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.
 - (vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.
 - (vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- (c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.
- (d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.
- (e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

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

(ii) The total of:

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

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

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

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

13. Termination for Non-Appropriation of Funds

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

14. Engineer's Records. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 <http://dos.myflorida.com/library-archives/records-management/>. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. Examination of Records

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

(b) The Engineer further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

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

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	<u>Workers' Compensation</u> The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount</u> Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	<u>Limits</u> Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	Limits: Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ To be determined.	
☐	Engineer Pollution Liability	Limits: Coverage - \$1,000,000	
☒	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ To be determined.	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

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

19. Sovereign Immunity The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

20. Liability for Loss or Damage

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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

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

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

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

22. E-Verify. Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

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

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

25. Controlling Law **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

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

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

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

Copy to: City of Port Orange
Attention: Lynn Stevens, Public Works & Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Engineer: ~~Kimley-Horn and Associates, Inc.
Attention: Brian A. Good, Director
421 Fayetteville Street
Suite 600
Raleigh, North Carolina 27601~~

Attention: Jonathan D. Thigpen, Senior Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile

~~Wayne.White@kimley-horn.com~~ jonathan.thigpen@kimley-horn.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may,

from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization.

31. Waiver of Breach and Materiality Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. Contract Construction

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

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

[Remainder of this page intentionally left blank]

Witnesses:

Nicole McConnell
Printed Name: NICOLE MCCONNELL

Tucker Hunter
Printed Name: Tucker Hunter

KIMLEY-HORN AND ASSOCIATES, INC.

By: Jonathan D. Thigpen
Jonathan D. Thigpen, Senior Vice President

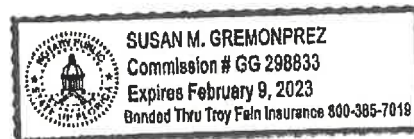
If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: January 7, 2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 7th day of January, 2022, by Jonathan D. Thigpen, as Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, registered to transact business in Florida. He is ☒ personally known or ☐ produced _____ as identification.

Susan M. Gremonprez
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:



Witnesses:

CITY OF PORT ORANGE

Printed Name: Samie Miller

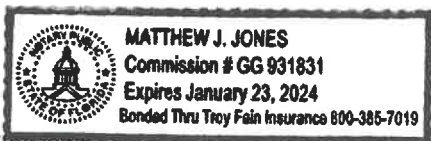
By: Donald O. Burnette
Donald O. Burnette, Mayor

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ☒ personally known or ☐ produced as identification.

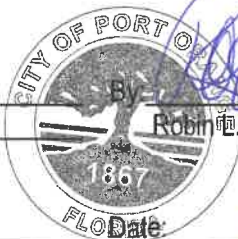


Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: Samie Miller



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

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ☒ personally known or ☐ produced as identification.



Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Engineer's Schedule of Hourly Billing Rates and RFSQ 21-03 Section 3

Consisting of 2 Pages

**KIMLEY HORN AND ASSOCIATES
SCHEDULE OF HOURLY BILLING RATES**

Labor Position/Classification Level	Hourly Rate
Principal	\$300.00
Senior Project Manager	\$230.00
Project Manager	\$190.00
Senior Project Engineer	\$210.00
Project Engineer	\$170.00
Analyst 3	\$145.00
Analyst 2	\$125.00
Analyst 1	\$115.00
Senior Environmental Scientist	\$185.00
Environmental Scientist	\$130.00
GIS Analyst	\$130.00
Grants Coordinator	\$175.00
Sr CAD Designer	\$185.00
CAD Designer	\$150.00
CAD Technician	\$110.00
Administrative	\$95.00
Clerical	\$75.00

Notes:

1. Billing rates listed in the table above are for the period from FY2022 through FY2024.
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost
- ~~4. Standard project expenses will be billed as an allocation equivalent to 5.0% of the labor fee.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
 - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
 - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
 - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
 - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
 - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
 - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
 - Engineering analysis/design and permitting of capital improvement projects, and
 - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
 - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
 - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
 - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ____

**Master Contract for Services dated _____
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.**

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

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

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

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

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____

Donald Burnette, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____



CITY OF PORT ORANGE

Agreement

RENEWAL FORM

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

Verify your records by providing the following information:

Name of Company/Organization: Kimley-Horn and Associates, Inc. ("Contractor")

Name of Contact Person: Jonathan Thigpen, Sr. Vice President

Mailing Address: 189 South Orange Avenue

Suite 100, Orlando, FL 32801

E-Mail Contact Address: Jonathan.thigpen@kimley-horn.com

Phone: (407) 898-1511 Fax: (561) 863-8175

☒ Standard Contract for Service CA No. 7763

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2025 To: January 17, 2026

Contractor to Provide to City:

☐ Updated Bond N/A

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

To be completed by the Contractor:

YES ☒ 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: _____

Signature

Date: 1/13/25

Please return to the City of Port Orange as follows:

Department: Engineering Department

Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager

Fax: (386) 756-5370

E-Mail: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

☒ Renewal Accepted by the Department

☐ Bond received by the Department OR ☒ Bond not applicable

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

City Manager: _____

Date: _____

Original Signed Form Must Be Returned to the City Clerk Form 13024



CITY OF PORT ORANGE

Agreement

RENEWAL FORM

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

Verify your records by providing the following information:

Name of Company/Organization: Kimley-Horn and Associates, Inc. ("Contractor")

Name of Contact Person: Jonathan Thigpen, Sr. Vice President

Mailing Address: 200 South Orange Avenue, Suite 600
Orlando, FL 32801

E-Mail Contact Address: Jonathan.thigpen@kimley-horn.com

Phone: (407) 898-1511 Fax: (561) 863-8175

☒ Standard Contract for Service CA No. 7763

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2026 To: January 17, 2027

Contractor to Provide to City:

☐ Updated Bond

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

☒ Human Trafficking Affidavit

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: _____

Signature

Date: November 5th
2025

Please return to the City of Port Orange as follows:

Department: Engineering Department

Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager

Fax: (386) 756-5370

E-Mail: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

☒ Renewal Accepted by the Department

☐ Bond received by the Department OR ☒ Bond not applicable

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

City Manager: _____

Date: 12/17/2025

Original Signed Form Must Be Returned to the City Clerk Form 13024



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/16/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Ins Center 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	CONTACT NAME: Jerry Noyola PHONE (A/C, No, Ext): 770.552.4225 E-MAIL ADDRESS: greylingcerts@greyling.com	FAX (A/C, No):
INSURED Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	KIMLASS	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : National Union Fire Ins Co of Pittsburg		19445
INSURER B : New Hampshire Insurance Company		23841
INSURER C : Lloyd's of London		85202
INSURER D : Columbia Casualty Company		31127
INSURER E :		
INSURER F :		

COVERAGES

CERTIFICATE NUMBER: 67824281

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GL5268169	4/1/2026	4/1/2027	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2026 4/1/2026	4/1/2027 4/1/2027	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			8038116944	4/1/2026	4/1/2027	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC067961230 (AOS) WC013711885 (CA)	4/1/2026 4/1/2026	4/1/2027 4/1/2027	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000
C	Professional Liability			RLUSP26000552026	4/1/2026	4/1/2027	Per Claim Aggregate \$2,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Master Contract Professional Engineering Services for Public Works, Utilities & Environmental Services; Nicole McConnell. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. The above referenced liability policies with the exception of workers compensation and professional liability are primary & non-contributory where required by written contract. Waiver of Subrogation in favor of Additional Insured(s) with respects to Workers Compensation where required by written contract & allowed by law. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange
1000 City Center Circle
Port Orange FL 32129

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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STATE OF Florida §
§
COUNTY OF Orange §

CA7763 Kimely-Horn
RSFQ21-03



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6e) Approval of the Contract with Explosive Touch Enterprises LLC for the Annual July 4th Fireworks Show

DEPARTMENT: Parks & Recreation

RECOMMENDED MOTION: Move to approve the contract with Explosive Touch Enterprises LLC for the annual 4th of July fireworks show and authorize the Mayor and City Clerk to execute all associated documents.

SUMMARY: Parks and Recreation Staff is requesting Council approval for a contract with Explosive Touch Enterprises LLC for the annual July 4th fireworks show. Explosive Touch Enterprises LLC has been the City's fireworks vendor for the past 5 years. This quote includes fireworks only. No drones are included in this contract.

Staff completed a Request for Quote (RFQ) on July 29, 2026. RFQ PR-10 - Annual Fireworks Display was sent to four (4) vendors and only one (1) vendor responded. The contract term is an initial two (2) years with two (2) one-year renewals. The initial term of the contract is not to exceed \$90,000.

- July 4th, 2027 \$45,000
- July 4th, 2028 \$45,000
- July 4th, 2029 \$45,000
- July 4th, 2030 \$47,250

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Explosive Touch Enterprises Fireworks Contract for 2027-2030	Explosive Touch Enterprises Fireworks Contract for 2027-2030.pdf
2.	Explosive touch proposal	Explosive touch proposal.pdf
3.	RFQ PR-10 Fireworks	RFQ PR-10 Fireworks.pdf
4.	Pricing sheet	Pricing sheet.pdf
5.	City of Port Orange Request for Quote email	City of Port Orange Request for Quote email.pdf
6.	Explosive Touch Sunbiz	Explosive Touch Sunbiz.pdf
7.	HTA 10.02.26	HTA 10.02.26.pdf

8.	Explosive Touch WC exempt 06.17.28	Explosive Touch WC exempt 06.17.28.pdf
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Jennifer Cox	Created/Initiated - 08/04/2026
Susan Lovallo	Approved - 08/10/2026
Sue Wang	Approved - 08/10/2026
Matthew Jones	Approved - 09/03/2026
Wayne Clark	Final Approval - 09/04/2026



CITY OF PORT ORANGE CONTRACT FOR SERVICES

This 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 **EXPLOSIVE TOUCH ENTERPRISES, LLC** ("Contractor"), a Florida corporation whose principal address is 4260 Amelia Plantation Court, Vero Beach, Florida 32967. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to furnish and provide 4th of July Event Aerial and Close Proximity Pyrotechnics ("Fireworks Display"), from the parking lot next to Soccer Field at 1000 City Center Circle, in the time, manner and place, as set forth herein and as further described in Contractor's Quote, which is attached hereto as Exhibit "1," and made a part hereof by reference.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties and shall continue for a period of two (2) years ("Term").

Renewals: This Contract may be renewed for two (2) optional one-year terms, subject to written approval of the City Manager and budget appropriation.

Manner and Place: The work shall be performed in accordance with and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances.

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

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a written Purchase Order issued by the City and executed by the City Manager. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion. **No authorization for services shall be granted until the City receives from the Contractor, copies of all business licenses and any certifications that are for all the services provided herein.**

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto, in an amount not to exceed the appropriated budget. A fifty percent (50%) deposit shall be required on or before October 31st of the then current year prior to the year in which the services will be provided (Ex. 50% deposit due October 31, 2026 for 4th of July show in 2027), with the remainder of the balance due in accordance with the Florida Prompt Payment Act, as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Administration. The Parks and Recreation Director, Susan Lovallo, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."
4. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.
5. Site for Exhibition. City acknowledges its responsibilities to provide a substitute site for exhibition, which shall include arrangements to keep spectators at least **350 feet** away from the area where the aerial fireworks firing will take place.
6. Responsibilities for Exhibition. Contractor shall obtain all required permits, for the firing of the exhibition. At the completion of the exhibition, Contractor shall clear all equipment and debris from the firing sites. Contractor will arrange for fire watch/inspection. City agrees to procure, furnish, and maintain a suitable place to display the said fireworks, and agree to furnish necessary police, fire and City's protection, for proper crowd control and auto parking. City is responsible for removal and or protecting all property and persons in the "firework fallout zone."
7. Postponement. In the event that weather conditions are such, that the Contractor and/or the City's Fire Marshall determines that the Firework Display would be impossible, impractical or risk damage or danger to person and/or property, the Parties agree to immediately hold a postponement meeting at which time an attempt to reschedule the Fireworks Display shall be discussed. In the event a mutually satisfactory postponement date is made the City will be charged the actual expenses incurred by Contractor related to the postponement. Actual expenses include but are not limited to: travel, lodging, labor, meals, rentals, security and permit fees.

In the event the City **postpones display before June 4, of the then applicable year** and agrees to a postponement date not more than 180 days from original contracted display date, Contractor shall only charge the amount equal to any expenses that cannot be recovered for items such as barge/equipment rental, travel, lodging, labor, meals, security, custom products (if applicable) and permit fees.

In the event the City **postpones display after June 4, of the then applicable year** and agrees to a postponement date not more than one hundred eighty (180) days from original Contract display date, Contractor shall charge an additional percentage of the then applicable Contract price as follows:

15%	June 4 th – 72 hours prior
30%	72 – 24 hours prior
60%	less than 24 hours prior

8. Publicity. Any and all publicity of the exhibition, including all advance announcements and advertising shall name Explosive Touch Enterprises, LLC as the primary contractor conducting the display.

9. 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 24 of this contract concerning disputes.

10. 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.

11. 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.

12. 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 used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

13. Public Records Compliance. 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.

14. 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.

15. Insurance. Contractor shall maintain insurance, as required herein and as provided in Contractor's Quote, referenced herein and attached hereto as Exhibit "1," 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. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit. 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.

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 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.

Contractor shall complete and provide to the City a signed Statement of Exemption from Worker's Compensation Requirement annually, attached hereto as Exhibit "2," and made a part hereof by reference. Furthermore, Contractor shall provide a signed Release and Waiver of Liability, attached hereto as Exhibit "3," and made a part hereof by reference, annually from each Independent Contractor working for the Contractor, as a sub-contractor, for each Fireworks Display event presented by the Contractor.

Remainder of page intentionally left blank.

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. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount 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.
☒	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>	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	

☐	Contractor Pollution Liability	Limits: Coverage - \$1,000,000	
☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage – \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to 100% of the amount established by a Task Authorization issued pursuant to the 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.		

16. 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.

17. 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.

18. 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.

19. Liability for Loss or Damage. Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the

Contract by Contractor, his/its agents, servants and employees. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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. Diversity, Equity, and Inclusion (DEI). Pursuant to Section 287.139, Florida Statutes, Contractor certifies that it does not and will not use City funds provided under this Agreement to require its employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed using materials relating to diversity, equity, and inclusion as defined in Section 166.04971, Florida Statutes. Contractor acknowledges that this certification is a material representation upon which the City has relied in entering into this Agreement. Contractor shall immediately notify the City in writing if it becomes unable to comply with this certification during the term of the Agreement. Failure to comply with this provision shall constitute a material breach of this Agreement and may result in termination for cause, withholding of payment, or any other remedy available to the City under this Agreement or applicable law.

22. 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.

23. 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: Susan Lovallo, Parks and Recreation Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5852
Contractor:	Explosive Touch Enterprises, LLC Attention: Elwood J. Weppel, IV, Member 4260 Amelia Plantation Court Vero Beach, Florida 32967 Telephone: (800) 590-7929 Facsimile: (772) 365-3943 E-Mail: info@explosivetouch.com

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

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:

EXPLOSIVE TOUCH ENTERPRISES, LLC

By: _____

Elwood J. Weppel, Authorized 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 corporation.

Printed Name: _____

Printed Name: _____

Date _____

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 12 Pages



City of

Port Orange

Fireworks Display

7/4/27 & 7/4/28 (+2y)

WE CREATE BLASTING IMPRESSIONS!

About Explosive Touch Enterprises:

Explosive Touch Enterprises was established in 2018. It evolved from the experience of a decade old fireworks company that originated in the Theme Park Entertainment Capital of the World, Orlando, FL.

Explosive Touch Enterprises will be your direct source of fireworks and special effect entertainment.

We have experience with all types of events which range from small backyard type displays to Major Professional Aerial Productions. To achieve success with all of our events, we use state of the art digital electronic firing systems and design software that gives us the availability to produce world class displays using the most brilliant and unique effects the industry has to offer. From large sky filling displays, to concise choreographed pyro-musicals... we can do it all!

In closing, Explosive Touch Enterprises offers our (AIS) All-Inclusive solution in producing the fireworks and special effects elements of your show or event. All of our events include site inspections, display permits, Coast Guard permits (if necessary), FAA clearance (if necessary) \$1,000,000.00 General and \$5,000,000.00 Auto Liability Insurance, Fire Marshal Fire Watch fees, Fire Truck Standby Fee (If Required), all travel costs, professional and trained pyrotechnics crew, and of course cleanup.



Six Flags Over Georgia - Austell, GA



Vero Beach Airshow - Vero Beach, FL

Our Displays

Our pyrotechnic displays include over 100 different types of pyrotechnic effects and patterns. We have the highest selection of premium products from all over the world including, but not limited to Europe, Asia, and the United States. We combine the pyrotechnic effects from these countries to provide you with the best possible design or synchronization to reflect the musical score of your show.

We have the newest and most technologically advanced computerized digital firing systems to ensure the effects are perfectly and safely fired or choreographed to any genre of live or pre-recorded music.



EXPLOSIVE TOUCH ENTERPRISES

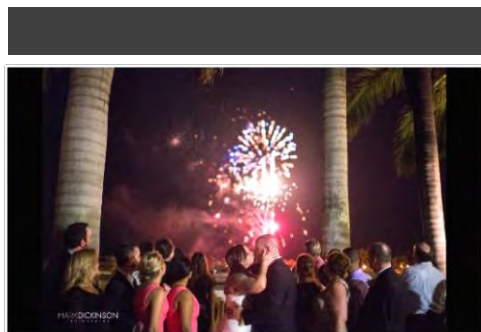
Featured Manufacturers:

1.3G Display Fireworks:

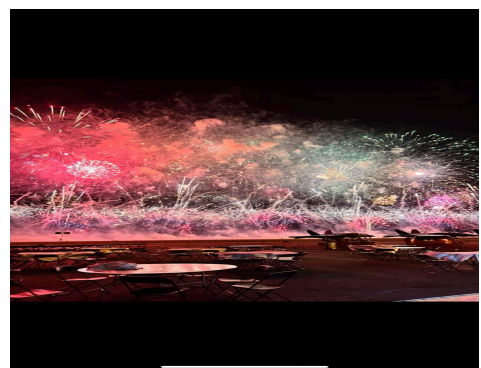


1.4G UN0431 Articles Pyrotechnics:





The Westin Resort Cape Coral, FL
Annual NYE Fireworks Display



Vero Beach Air Show



Ritz-Carlton Sarasota Resort

Wedding Fireworks

Our Team and Crews

The leadership at Explosive Touch Enterprises has over 50 combined years of experience working with fireworks and special effects for some of the largest entertainment companies and venues in the world. We ensure that our technicians are educated annually on all applicable safety standards including new ATF regulations, NFPA Codes, DOT standards and more, ensuring that your show will meet and exceed all safety standards.

EJ Weppel - CEO and President

EJ is the founder. He began his career working for a major theme park in Orlando, FL. When he left there, he continued his path to pyrotechnic greatness working with a large competing company. From there, he decided to branch out on his own and Explosive Touch Enterprises was born.

Pyrotechnic Crew

Explosive Touch Enterprises has a vast pool of pyrotechnicians that work with us on a regular basis. Senior Shooters have been with the company since the beginning and have been trained and certified each year. Most of them have other full-time jobs for some of the biggest names in the Entertainment Industry and shoot their shows regularly. All our show site assistants are 100% trained in the company policies of safe handling of materials and under the direction of the onsite shooter. Assistants have a wide range of skill sets and most are working toward being full fledged pyrotechnic shooters within the company.

EXPLOSIVE
TOUCH ENTERPRISES

Technical Fireworks Display Proposal

Opener:

190 Total Display Shells
100 : 1" - 2.5" Premium single shot and multi shot cake effects
50 : 3" Premium Fireworks variety of effects
36 : 4" Premium Fireworks variety of effects
4 : 5" Premium Fireworks variety of effects
: 6" Premium Fireworks variety of effects
: 7" Premium Fireworks variety of effects
: 8" Premium Fireworks variety of effects
: 10" Premium Fireworks variety of effects

Main Body:

1,932 Total Display Shells
1,000 : 1" - 2.5" Premium single shot and multi shot cake effects
500 : 3" Premium Fireworks variety of effects
360 : 4" Premium Fireworks variety of effects
72 : 5" Premium Fireworks variety of effects
: 6" Premium Fireworks variety of effects
: 7" Premium Fireworks variety of effects
: 8" Premium Fireworks variety of effects
: 10" Premium Fireworks variety of effects

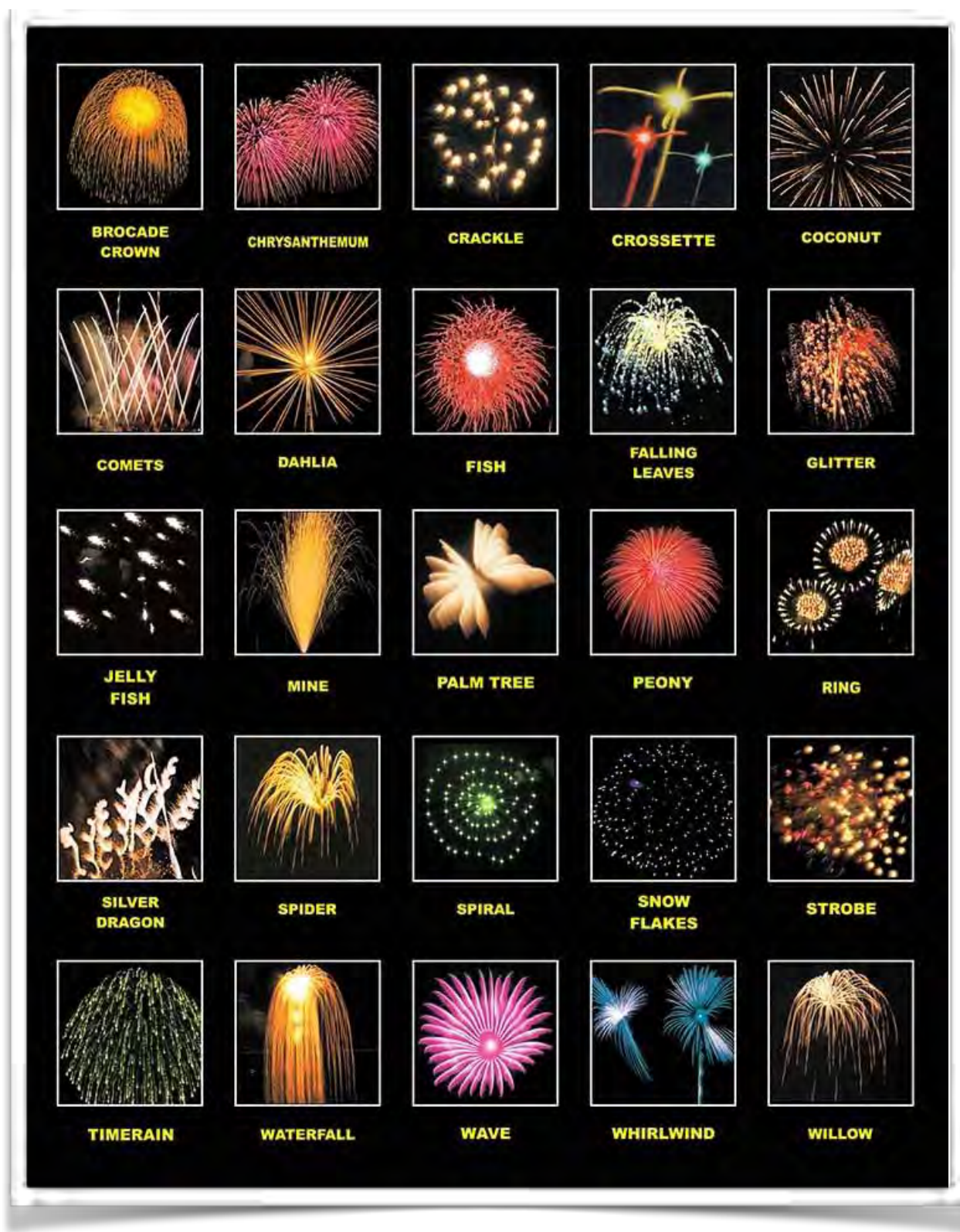
Grand Finale:

1,396 Total Display Shells
1,000 : 1" - 2.5" Premium single shot and multi shot cake effects
300 : 3" Premium Fireworks variety of effects
72 : 4" Premium Fireworks variety of effects
24 : 5" Premium Fireworks variety of effects
: 6" Premium Fireworks variety of effects
: 7" Premium Fireworks variety of effects
: 8" Premium Fireworks variety of effects
: 10" Premium Fireworks variety of effects

3,518 TOTAL SHELL COUNT
15-Minutes Duration of Fireworks Display

*** All Fireworks/Effects will be fired 100% electronically. We do not hand fire any of your display which provides you with non-stop action***

Our most commonly used effects inventory used to create a unique display keeping your audience excited and craving more!



Pyrotechnic Effect Definitions

Brocade – A spider like effect in the sky, much like fine lace. The brocade effect is generally a golden tail effect, and is brighter than the willow or tiger tail effect. Most brocade effects use glitter to produce the long brocade tails.

Chrysanthemum – A flower-like aerial pattern, usually resulting from a cake or mortar.

Comet – A type of star that leaves a long trail of sparks as it flies through the air.

Crossette – A type of comet that breaks into multiple comets, usually forming a cross shape.

Pearls – Bright balls of color that fly through the sky and burn themselves out after reaching maximum height.

Dragon Eggs – A delayed crackle effect displayed in egg-shaped patterns with loud crackle near the end.

Waterfall – Glowing embers that fall slowly in the air, creating a willow or waterfall effect.

Flying Fish – An aerial effect that looks like a swarm of objects squirming through the air. This effect usually lasts only a few seconds. Fish are a type of fuse that propels itself through the air, creating a swimming effect.

Palm Tree – An aerial effect that produces a gold or silver stem as the shell rises into the sky (known as a rising tail), followed by a brocade or willow effect that creates palm fronds. It resembles a gold or silver palm tree in the sky.

Peony – An aerial effect that looks like a spherical ball of colored lights in the sky. A very common aerial effect on most fireworks displays.

Ghost - An aerial effect that creates a disappearing and re-appearing color trail new to the fireworks industry.

Rising Tail – A rising tail is a gold or silver tail effect that is created when a shell is shot into the sky, similar to the trunk of a tree. Commonly used with palm tree shells.

Strobe – A strobe is a blinking effect. When used in a shell with hundreds of strobe stars, the strobe effect looks like shimmering water in the sky. Strobes can be a variety of colors, including white, green, blue, and orange.

Tourbillion – Another name for a serpent. A tourbillion is a type of star that spins in the sky and gives off large quantities of gold, silver, or white light.

Willow – An aerial effect that looks like a giant gold willow tree in the sky. A true willow effect has delicate golden trails that hang in the sky ten seconds or more.

Pattern - An aerial effect including but not limited to Smiles, Hearts, Squares, Diamonds, Stars, 3D Cubes always a crowd pleaser



EXPLOSIVE
TOUCH ENTERPRISES

EXPLOSIVE



TOUCH ENTERPRISES

What is included in your All-Inclusive Package

SITE INSPECTION

FIREWORKS DISPLAY PERMIT

COAST GUARD PERMIT (IF REQUIRED)

FAA CLEARANCE (IF REQUIRED)

MINIMUM \$1,000,000.00 GENERAL LIABILITY INSURANCE

FIRE MARSHAL FIRE WATCH FEES

FIRE TRUCK STANDBY FEE (IF REQUIRED)

ALL TRAVEL/LOGISTICS COSTS

PROFESSIONAL PYROTECHNICS CREW

100% ELECTRONICALLY FIRED DISPLAY

STRIKE/CLEAN UP

BARGE, TUG, FUEL, ETC.



Explosive Touch Enterprises, LLC.
ATF 1-FL-061-23-8L-01157
4260 Amelia Plantation Court
Vero Beach, FL 32967

Prepared For
Jennifer Cox
City of Port Orange
1395 Dunlawton Avenue
Port Orange, FL 32129

Estimate Date
07/15/2026

Estimate Number
06042031

Reference
July 4th, 2027-2028 + (2)
1 year renewals

Description	Rate	Qty	Line Total
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2027	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2028	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2029	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2030	\$47,250.00	1	\$47,250.00
Subtotal			182,250.00
Tax			0.00
Estimate Total (USD)			\$182,250.00

Notes

This quote is for 2027 + 2028 July 4th Fireworks Display(s) for the City of Port Orange. It also includes the pricing for (2) 1 year optional renewals. The price has been locked in for 3 years 2027-2029 with the 4th year having a 5% increase due to increased costs by 2030.



**RFQ PK-10 ANNUAL FIREWORKS DISPLAY
PRICE SHEET**

Item No.	Description	Total Cost
1	July 4th, 2027 Fireworks Display	\$ 45,000.00
2	July 4th, 2028 Fireworks Display	\$ 45,000.00
3	July 4th, 2029 Fireworks Display	\$ 45,000.00
4	July 4th, 2030 Fireworks Display	\$ 47,250.00
	TOTAL	\$ 182,250.00

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF ATF - Chief, FELC
Correspondence To 244 Needy Road
 Martinsburg, WV 25405-9431

License/Permit
Number **1-FL-061-23-8L-01157**

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date **November 1, 2028**

Shawn Stevens

Name
ANGRY UNICORN IMPORTS

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

**4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-**

Type of License or Permit

23-IMPORTER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

**EXPLOSIVE TOUCH ENTERPRISES LLC
ANGRY UNICORN IMPORTS
4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-**

EJ Weppel
Licensee/Permittee Responsible Person Signature

President/owner
Position/Title

EJ Weppel II
Printed Name

12/1/2025
Date

Previous Edition is Obsolete

EXPLOSIVE TOUCH ENTERPRISES LLC 4260 AMELIA PLANTATION COURT 32967-1-FL-061-23-8L-01157 November 1, 2028 23-IMPORTER OF EXPLOSIVES

ATF Form 5400-14-5400-15 Part I
Revised September 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. **(The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)**

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

(Continued on reverse side)

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Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: **EXPLOSIVE TOUCH ENTERPRISES LLC**

Business Name: **ANGRY UNICORN IMPORTS**

License/Permit Number: **1-FL-061-23-8L-01157**

License/Permit Type: **23-IMPORTER OF EXPLOSIVES**

Expiration: **November 1, 2028**

Please Note: Not Valid for the Sale or Other Disposition of Explosives.

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF
Correspondence To
ATF - Chief, FELC
244 Needy Road
Martinsburg, WV 25405-9431

License/Permit
Number

1-FL-061-20-8D-01296

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date

April 1, 2028

Shawn Stevens

Name
EXPLOSIVE TOUCH ENTERPRISES LLC

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-

Type of License or Permit

20-MANUFACTURER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transfer of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

EXPLOSIVE TOUCH ENTERPRISES LLC
4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-

EJ Weppel
Licensee/Permittee Responsible Person Signature

President/owner
Position/Title

EJ Weppel/IV
Printed Name

10/14/2025
Date

Previous Edition is Obsolete

EXPLOSIVE TOUCH ENTERPRISES LLC:4260 AMELIA PLANTATION COURT:32967-1-FL-061-20-8D-01296 April 1, 2028 20-MANUFACTURER OF EXPLOSIVES

ATF Form 5400.14/5400.15 Part I
Revised September 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. **(The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)**

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

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Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: EXPLOSIVE TOUCH ENTERPRISES LLC

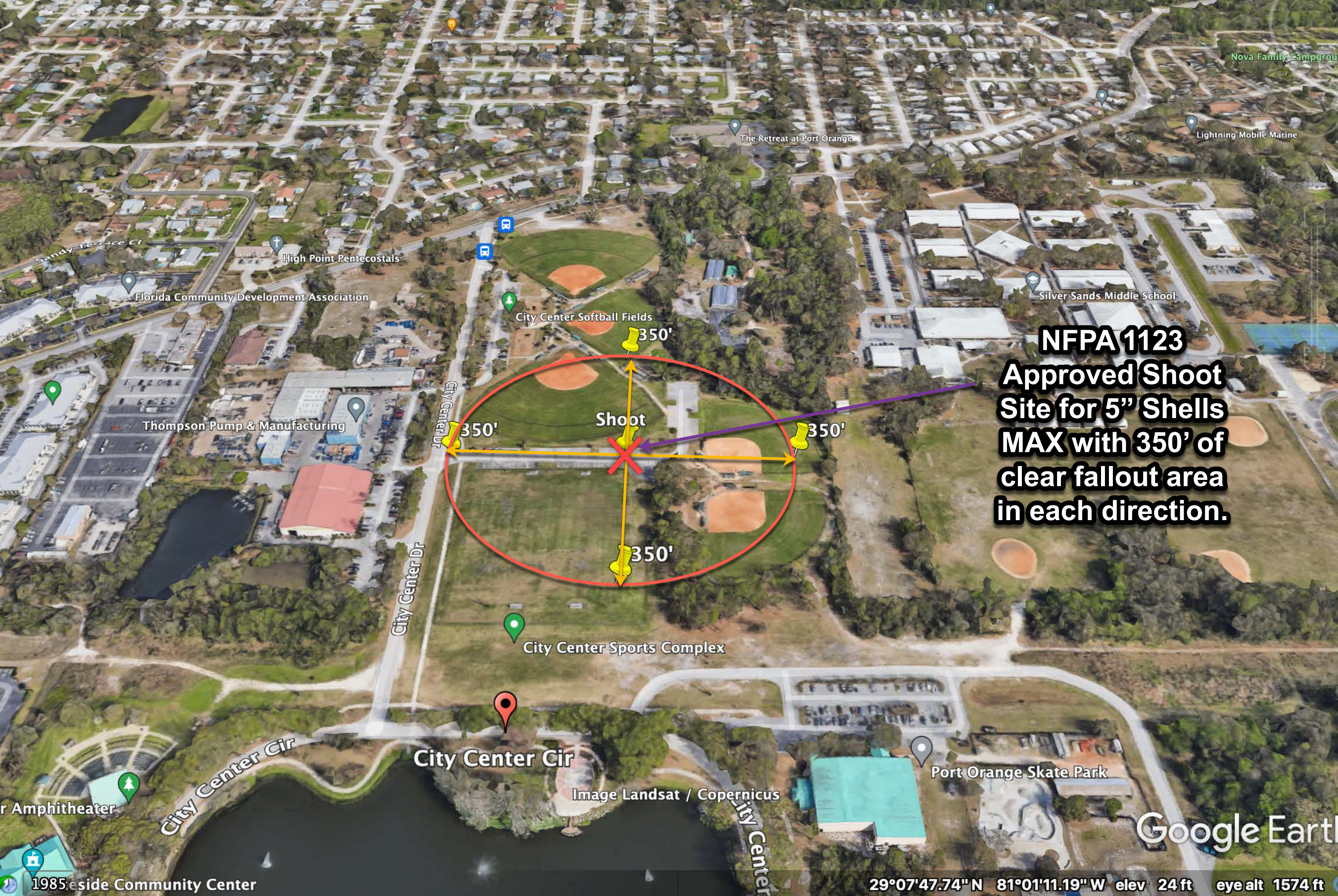
Business Name:

License/Permit Number: 1-FL-061-20-8D-01296

License/Permit Type: 20-MANUFACTURER OF EXPLOSIVES

Expiration: April 1, 2028

Please Note: Not Valid for the Sale or Other Disposition of Explosives.



NFPA 1123
Approved Shoot
Site for 5" Shells
MAX with 350' of
clear fallout area
in each direction.

r Amphitheater

City Center Cir

City Center Cir

Image Landsat / Copernicus

Port Orange Skate Park

Google Earth

1985 eside Community Center

29°07'47.74" N 81°01'11.19" W elev 24 ft eye alt 1574 ft

EXHIBIT "2"

Annual Form For Each Yearly Fireworks Display:
Statement of Exemption from Worker's Compensation Requirement
Consisting of 1 Total Page

STATEMENT OF EXEMPTION FROM WORKER'S COMPENSATION REQUIREMENT

TO: City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

I, _____, as _____ of Explosive Touch Enterprises, LLC, a Florida limited liability company ("Explosive Touch"), do hereby declare and affirm that:

1. Explosive Touch is not engaged in the "construction industry" as defined in FL Chapter 440 and does not employ more than three persons (including Corporate Officers, if any).
2. Explosive Touch does not carry Florida Workers' Compensation insurance.
3. Hereby certify that Explosive Touch claims the exemption provided under Florida Statutes and has provided said documentation to the City of Port Orange.
3. Any persons that Explosive Touch may engage to work will have legal status as independent contractors, and not employees.
4. Hereby affirm that all such independent contractors have been advised that they are not covered by Workers Compensation insurance, and would be responsible for carrying their own such coverage if they so desire.
5. If Explosive Touch should fall under Florida Statute 440 regarding Workers' Compensation insurance, Explosive Touch shall immediately obtain such coverage and provide evidence of it to you.

Accordingly, I hereby declare that the information provided in this Statement is accurate. Furthermore, I certify that I have read and understand the above statements regarding my rights and responsibilities as to the provision of Workers' Compensation coverage.

(Please Print Name)

Signature/Title

Date

Company Name

Company Street Address/City/State/Zip Code

EXHIBIT “3”

Annual Form For Each Yearly Fireworks Display:

Release and Waiver of Liability

Consisting of 2 Pages

Release and Waiver of Liability

I, _____, am an independent contractor ("Independent Contractor") who having entered into an agreement with Explosive Touch Enterprises, LLC, a Florida limited liability company, ("Contractor") to provide services to the Contractor in my capacity as an independent contractor and separate of the City, do hereby execute this Release and Waiver of Liability ("Release"), releasing the City of Port Orange, and each of its successors, assigns, elected officials, officers, employees, and agents (collectively referred to herein as the "City") from any and all liability, claim, or demands of whatever kind of nature, either in law or in equity, which arises or may hereafter arise from the services provided to the City by the Contractor in a contract for provision of a fireworks display on July 4, 20____ ("Contract"), or occurring while I am engaged by the Contractor in my capacity as an independent contractor providing said services, as more fully set forth hereinbelow.

Independent Contractor understands that he/she is responsible for his/her own insurance coverage in the event of personal injury or illness as a result of services provided to the City.

1. **Waiver and Release.** I, Independent Contractor, for myself and my heirs, executors, administrators and assigns, hereby release, waive, discharge, and hold harmless, City from any and all liability, claim, or demands of whatever kind of nature, either in law or in equity, which arises or may hereafter arise from the provision of services under the Contract, or occurring while I am engaged by the Contractor in my capacity as an independent contractor providing said services. I understand and acknowledge that this Release discharges the City from any liability or claim that I may have against the City with respect to bodily injury, personal injury, illness, death, property damage, or any other claim that may result from the provision of services under the Contract, or occurring while I am engaged by the Contractor in my capacity as an independent contractor, providing said services.
2. **Insurance.** Further, I understand that the City does not assume any responsibility for or obligation to provide me with financial or other assistance, including but not limited to medical, health, workers compensation, or disability benefits or insurance. I expressly waive any such claim for compensation or liability on the part of the City beyond what may be offered freely in the event of injury or medical expense incurred by me.
3. **Medical Treatment.** I hereby release and discharge the City from any claim whatsoever which arises or may hereafter arise on account of any first-aid treatment or other medical services rendered in connection with an emergency during my tenure as an Independent Contractor providing services to the Contractor, as it relates to the Contract.

4. **Assumption of Risk.** I understand that the services I provide to the Contractor in furtherance of the Contract may include activities that are inherently dangerous. As an Independent Contractor, I hereby expressly assume the risk of injury or harm from these activities and release the City from any and all liability.
5. **Independent Contractor.** I am an independent contractor as I am an individual engaged in an independent trade, occupation, profession, or business, with no employees. I have been hired as an independent contractor by the Contractor who is providing services to the City of Port Orange. The actual work performed by me is not overseen or instructed by the City of Port Orange. I am compensated by Explosive Touch Enterprises, LLC at a fixed or contract rate. The business operations of the City of Port Orange are separate and distinct from my services being provided as a result of my agreement with Explosive Touch Enterprises, LLC.
6. **Other.** As an Independent Contractor, I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of Florida and that this Release shall be governed by and interpreted in accordance with the laws of the State of Florida. I agree that in the event that any clause or provision of this Release is deemed invalid, the enforceability of the remaining provisions of this Release shall not be affected.

By signing below, I express my understanding and intent to enter into this Release and Waiver of Liability willingly and voluntarily.

Independent Contractor:

(Signature)

(Printed Name)

Date: _____



City of

Port Orange

Fireworks Display

7/4/27 & 7/4/28 (+2y)

WE CREATE BLASTING IMPRESSIONS!

About Explosive Touch Enterprises:

Explosive Touch Enterprises was established in 2018. It evolved from the experience of a decade old fireworks company that originated in the Theme Park Entertainment Capital of the World, Orlando, FL.

Explosive Touch Enterprises will be your direct source of fireworks and special effect entertainment.

We have experience with all types of events which range from small backyard type displays to Major Professional Aerial Productions. To achieve success with all of our events, we use state of the art digital electronic firing systems and design software that gives us the availability to produce world class displays using the most brilliant and unique effects the industry has to offer. From large sky filling displays, to concise choreographed pyro-musicals... we can do it all!

In closing, Explosive Touch Enterprises offers our (AIS) All-Inclusive solution in producing the fireworks and special effects elements of your show or event. All of our events include site inspections, display permits, Coast Guard permits (if necessary), FAA clearance (if necessary) \$1,000,000.00 General and \$5,000,000.00 Auto Liability Insurance, Fire Marshal Fire Watch fees, Fire Truck Standby Fee (If Required), all travel costs, professional and trained pyrotechnics crew, and of course cleanup.



Six Flags Over Georgia - Austell, GA



Vero Beach Airshow - Vero Beach, FL

Our Displays

Our pyrotechnic displays include over 100 different types of pyrotechnic effects and patterns. We have the highest selection of premium products from all over the world including, but not limited to Europe, Asia, and the United States. We combine the pyrotechnic effects from these countries to provide you with the best possible design or synchronization to reflect the musical score of your show.

We have the newest and most technologically advanced computerized digital firing systems to ensure the effects are perfectly and safely fired or choreographed to any genre of live or pre-recorded music.



EXPLOSIVE TOUCH ENTERPRISES

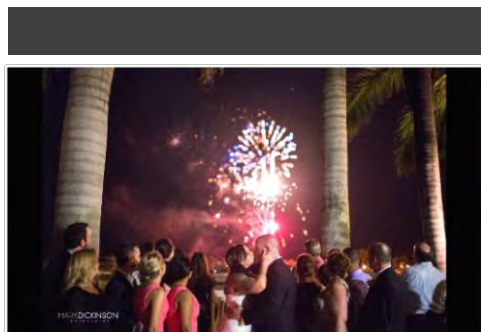
Featured Manufacturers:

1.3G Display Fireworks:

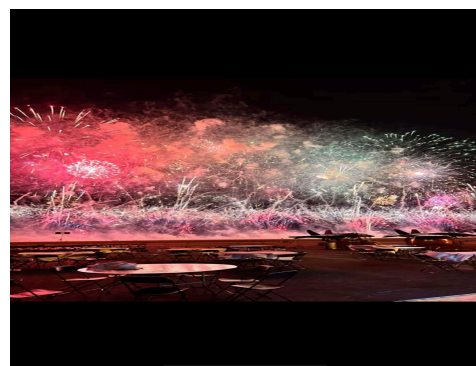


1.4G UN0431 Articles Pyrotechnics:





The Westin Resort Cape Coral, FL
Annual NYE Fireworks Display



Vero Beach Air Show



Ritz-Carlton Sarasota Resort

Wedding Fireworks

Our Team and Crews

The leadership at Explosive Touch Enterprises has over 50 combined years of experience working with fireworks and special effects for some of the largest entertainment companies and venues in the world. We ensure that our technicians are educated annually on all applicable safety standards including new ATF regulations, NFPA Codes, DOT standards and more, ensuring that your show will meet and exceed all safety standards.

EJ Weppel - CEO and President

EJ is the founder. He began his career working for a major theme park in Orlando, FL. When he left there, he continued his path to pyrotechnic greatness working with a large competing company. From there, he decided to branch out on his own and Explosive Touch Enterprises was born.

Pyrotechnic Crew

Explosive Touch Enterprises has a vast pool of pyrotechnicians that work with us on a regular basis. Senior Shooters have been with the company since the beginning and have been trained and certified each year. Most of them have other full-time jobs for some of the biggest names in the Entertainment Industry and shoot their shows regularly. All our show site assistants are 100% trained in the company policies of safe handling of materials and under the direction of the onsite shooter. Assistants have a wide range of skill sets and most are working toward being full fledged pyrotechnic shooters within the company.

EXPLOSIVE
TOUCH ENTERPRISES

Technical Fireworks Display Proposal

Opener: _____ 190 _____ **Total Display Shells**

100 : 1" - 2.5" Premium single shot and multi shot cake effects
50 : 3" Premium Fireworks variety of effects
36 : 4" Premium Fireworks variety of effects
4 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

Main Body: _____ 1,932 _____ **Total Display Shells**

1,000 : 1" - 2.5" Premium single shot and multi shot cake effects
500 : 3" Premium Fireworks variety of effects
360 : 4" Premium Fireworks variety of effects
72 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

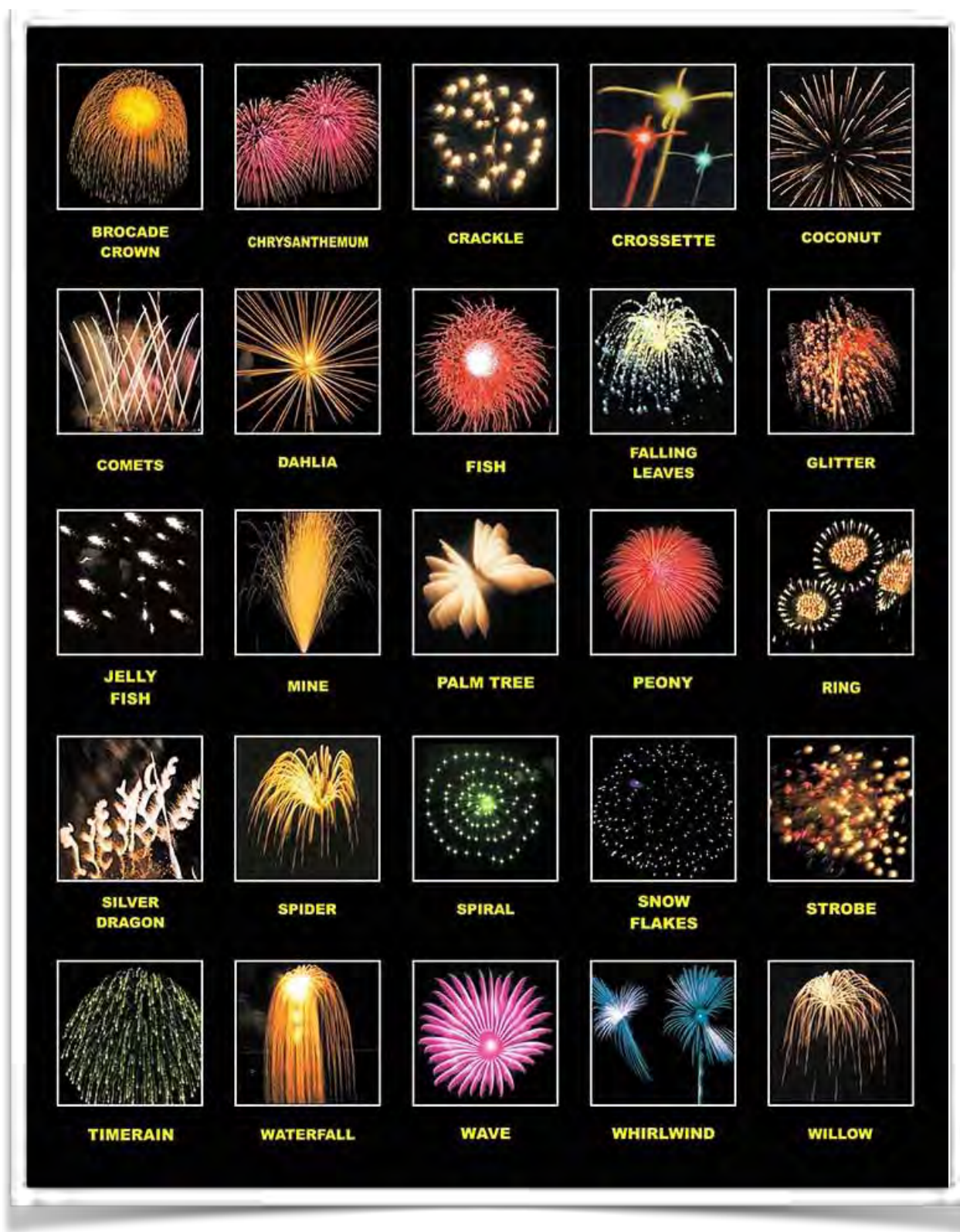
Grand Finale: _____ 1,396 _____ **Total Display Shells**

1,000 : 1" - 2.5" Premium single shot and multi shot cake effects
300 : 3" Premium Fireworks variety of effects
72 : 4" Premium Fireworks variety of effects
24 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

_____ 3,518 _____ **TOTAL SHELL COUNT**
_____ 15-Minutes _____ **Duration of Fireworks Display**

*** All Fireworks/Effects will be fired 100% electronically. We do not hand fire any of your display which provides you with non-stop action***

Our most commonly used effects inventory used to create a unique display keeping your audience excited and craving more!



Pyrotechnic Effect Definitions

Brocade – A spider like effect in the sky, much like fine lace. The brocade effect is generally a golden tail effect, and is brighter than the willow or tiger tail effect. Most brocade effects use glitter to produce the long brocade tails.

Chrysanthemum – A flower-like aerial pattern, usually resulting from a cake or mortar.

Comet – A type of star that leaves a long trail of sparks as it flies through the air.

Crossette – A type of comet that breaks into multiple comets, usually forming a cross shape.

Pearls – Bright balls of color that fly through the sky and burn themselves out after reaching maximum height.

Dragon Eggs – A delayed crackle effect displayed in egg-shaped patterns with loud crackle near the end.

Waterfall – Glowing embers that fall slowly in the air, creating a willow or waterfall effect.

Flying Fish – An aerial effect that looks like a swarm of objects squirming through the air. This effect usually lasts only a few seconds. Fish are a type of fuse that propels itself through the air, creating a swimming effect.

Palm Tree – An aerial effect that produces a gold or silver stem as the shell rises into the sky (known as a rising tail), followed by a brocade or willow effect that creates palm fronds. It resembles a gold or silver palm tree in the sky.

Peony – An aerial effect that looks like a spherical ball of colored lights in the sky. A very common aerial effect on most fireworks displays.

Ghost - An aerial effect that creates a disappearing and re-appearing color trail new to the fireworks industry.

Rising Tail – A rising tail is a gold or silver tail effect that is created when a shell is shot into the sky, similar to the trunk of a tree. Commonly used with palm tree shells.

Strobe – A strobe is a blinking effect. When used in a shell with hundreds of strobe stars, the strobe effect looks like shimmering water in the sky. Strobes can be a variety of colors, including white, green, blue, and orange.

Tourbillion – Another name for a serpent. A tourbillion is a type of star that spins in the sky and gives off large quantities of gold, silver, or white light.

Willow – An aerial effect that looks like a giant gold willow tree in the sky. A true willow effect has delicate golden trails that hang in the sky ten seconds or more.

Pattern - An aerial effect including but not limited to Smiles, Hearts, Squares, Diamonds, Stars, 3D Cubes always a crowd pleaser



EXPLOSIVE
TOUCH ENTERPRISES

EXPLOSIVE



TOUCH ENTERPRISES

What is included in your All-Inclusive Package

SITE INSPECTION

FIREWORKS DISPLAY PERMIT

COAST GUARD PERMIT (IF REQUIRED)

FAA CLEARANCE (IF REQUIRED)

MINIMUM \$1,000,000.00 GENERAL LIABILITY INSURANCE

FIRE MARSHAL FIRE WATCH FEES

FIRE TRUCK STANDBY FEE (IF REQUIRED)

ALL TRAVEL/LOGISTICS COSTS

PROFESSIONAL PYROTECHNICS CREW

100% ELECTRONICALLY FIRED DISPLAY

STRIKE/CLEAN UP

BARGE, TUG, FUEL, ETC.



Explosive Touch Enterprises, LLC.
ATF 1-FL-061-23-8L-01157
4260 Amelia Plantation Court
Vero Beach, FL 32967

Prepared For
Jennifer Cox
City of Port Orange
1395 Dunlawton Avenue
Port Orange, FL 32129

Estimate Date
07/15/2026

Estimate Number
06042031

Reference
July 4th, 2027-2028 + (2)
1 year renewals

Description	Rate	Qty	Line Total
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2027	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2028	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2029	\$45,000.00	1	\$45,000.00
Professional Fireworks Display & PYRO Services Professional Fireworks Display for July 4th, 2030	\$47,250.00	1	\$47,250.00
Subtotal			182,250.00
Tax			0.00
Estimate Total (USD)			\$182,250.00

Notes

This quote is for 2027 + 2028 July 4th Fireworks Display(s) for the City of Port Orange. It also includes the pricing for (2) 1 year optional renewals. The price has been locked in for 3 years 2027-2029 with the 4th year having a 5% increase due to increased costs by 2030.



**RFQ PK-10 ANNUAL FIREWORKS DISPLAY
PRICE SHEET**

Item No.	Description	Total Cost
1	July 4th, 2027 Fireworks Display	\$ 45,000.00
2	July 4th, 2028 Fireworks Display	\$ 45,000.00
3	July 4th, 2029 Fireworks Display	\$ 45,000.00
4	July 4th, 2030 Fireworks Display	\$ 47,250.00
	TOTAL	\$ 182,250.00

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF ATF - Chief, FELC
Correspondence To 244 Needy Road
 Martinsburg, WV 25405-9431

License/Permit
Number **1-FL-061-23-8L-01157**

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date **November 1, 2028**

Shawn Stevens

Name
ANGRY UNICORN IMPORTS

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

**4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-**

Type of License or Permit

23-IMPORTER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

**EXPLOSIVE TOUCH ENTERPRISES LLC
ANGRY UNICORN IMPORTS
4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-**

EJ Weppel
Licensee/Permittee Responsible Person Signature

President/owner
Position/Title

EJ Weppel II
Printed Name

12/1/2025
Date

Previous Edition is Obsolete

EXPLOSIVE TOUCH ENTERPRISES LLC 4260 AMELIA PLANTATION COURT 32967-1-FL-061-23-8L-01157 November 1, 2028 23-IMPORTER OF EXPLOSIVES

ATF Form 5400-14-5400-15 Part I
Revised September 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. **(The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)**

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

(Continued on reverse side)

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Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: **EXPLOSIVE TOUCH ENTERPRISES LLC**

Business Name: **ANGRY UNICORN IMPORTS**

License/Permit Number: **1-FL-061-23-8L-01157**

License/Permit Type: **23-IMPORTER OF EXPLOSIVES**

Expiration: **November 1, 2028**

Please Note: Not Valid for the Sale or Other Disposition of Explosives.

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF
Correspondence To
ATF - Chief, FELC
244 Needy Road
Martinsburg, WV 25405-9431

License/Permit
Number

1-FL-061-20-8D-01296

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date

April 1, 2028

Shawn Stevens

Name
EXPLOSIVE TOUCH ENTERPRISES LLC

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-

Type of License or Permit

20-MANUFACTURER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transfer of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

EXPLOSIVE TOUCH ENTERPRISES LLC
4260 AMELIA PLANTATION COURT
VERO BEACH, FL 32967-

EJ Weppel
Licensee/Permittee Responsible Person Signature

President/owner
Position/Title

EJ Weppel/IV
Printed Name

10/14/2025
Date

Previous Edition is Obsolete

EXPLOSIVE TOUCH ENTERPRISES LLC:4260 AMELIA PLANTATION COURT:32967-1-FL-061-20-8D-01296 April 1, 2028 20-MANUFACTURER OF EXPLOSIVES

ATF Form 5400.14/5400.15 Part I
Revised September 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. **(The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)**

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

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Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: EXPLOSIVE TOUCH ENTERPRISES LLC

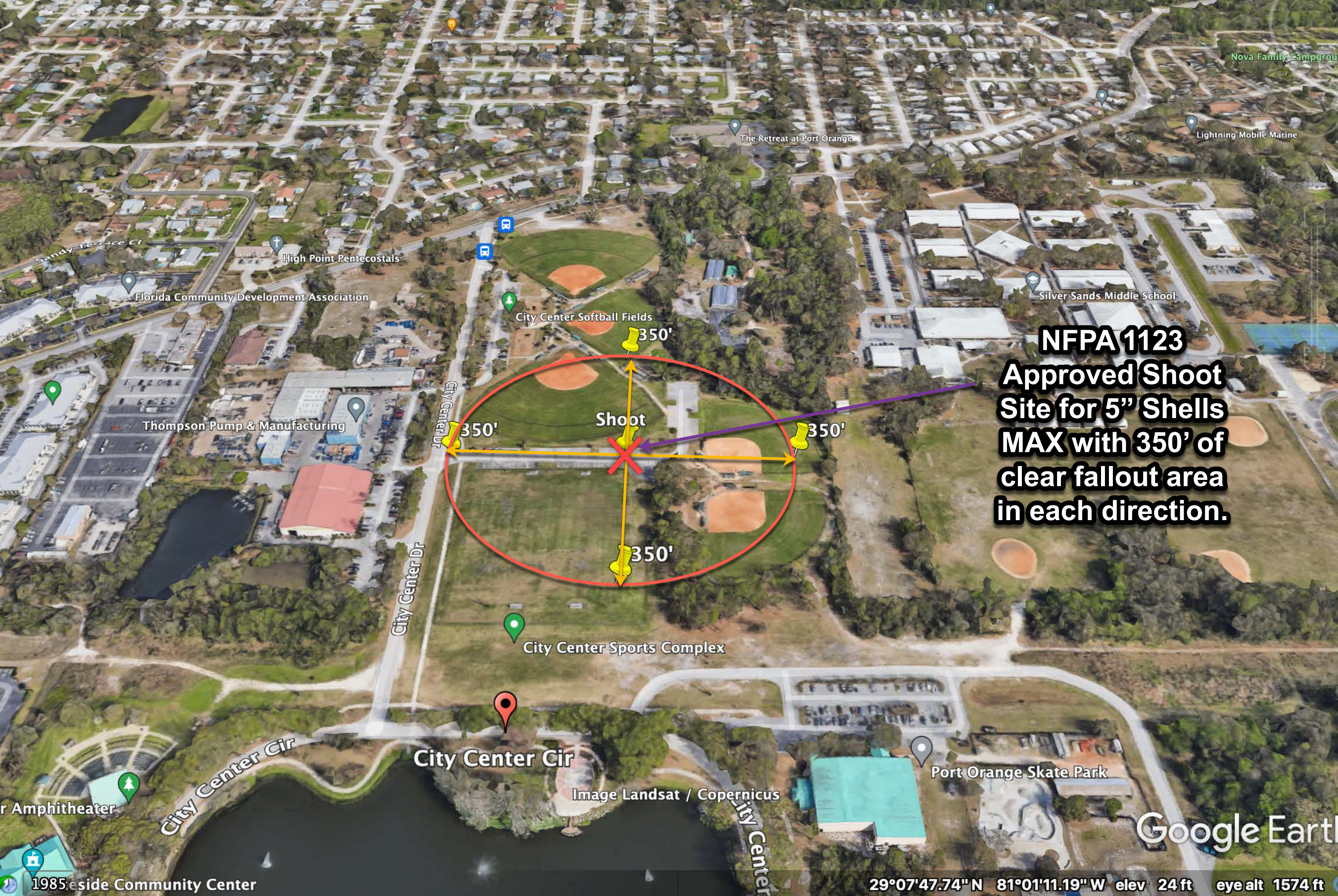
Business Name:

License/Permit Number: 1-FL-061-20-8D-01296

License/Permit Type: 20-MANUFACTURER OF EXPLOSIVES

Expiration: April 1, 2028

Please Note: Not Valid for the Sale or Other Disposition of Explosives.



NFPA 1123
Approved Shoot
Site for 5" Shells
MAX with 350' of
clear fallout area
in each direction.

r Amphitheater

City Center Cir

City Center Cir

Image Landsat / Copernicus

Port Orange Skate Park

Google Earth

1985 eside Community Center

29°07'47.74" N 81°01'11.19" W elev 24 ft eye alt 1574 ft

RFQ #PR-10 Annual Fireworks Display

Proposal Timeline

Proposal request sent: 07/15/26

Proposals due: 07/29/26 by 5:00pm

Please direct all questions in writing to jcox@port-orange.org

SCOPE OF WORK

The Contractor shall provide all labor, materials, equipment, transportation, permits, insurance, licensed pyrotechnicians, safety personnel, firing systems, cleanup, and all other incidentals necessary to furnish and conduct annual professional fireworks displays for the City of Port Orange annual 4th of July Spectacular.

The event is at 9pm sharp on the 4th of July each year from the parking lot next to the soccer field at 1000 City Center Circle.

The fireworks display shall be a choreographed, computer-fired aerial fireworks show lasting approximately fifteen (15) minutes.

The display shall include the following aerial shell quantities:

<u>Shell Size</u>	<u>Quantity</u>
2.5 inches or smaller	1,600
3 inches	850
4 inches	450
5 inches	50

All fireworks shall be:

- Commercial display-grade fireworks.
- New and unused.
- Manufactured in accordance with applicable federal regulations.
- Free of defects or damage.

SPECIAL CONDITIONS

AWARD RECOMMENDATION:

It is the intent of the City to award a contract to the lowest responsive and responsible Bidder.

CONTRACT TERM:

The initial term of the contract shall be two (2) years upon mutual agreement. Two (2) one-year renewals are available upon agreement between both parties.

SAFETY:

The Contractor shall:

- Comply with all applicable OSHA regulations.
- Comply with the current edition of **NFPA 1123 – Code for Fireworks Display**.

REPAIR OF DAMAGES:

It is the responsibility of the awarded Bidder to repair any damages incurred in the area directly related to the services being provided as described herein. When damages occurs, the City of Port Orange Representative is to be notified immediately (withing an hour of the occurrence) and shall inspect the repairs upon completion.

INSURANCE REQUIREMENTS: To be provided by awarded contractor prior to the event

The City shall be listed as an additional insured on the Auto Liability policy and the General Liability policy. A waiver of subrogation is required on the Workers' Compensation policy. The certificate holder shall read:

City of Port Orange
1000 City Center Cir
Port Orange, FL 32129

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 Exhibit Form..	<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></table> Contracts over \$20 million To Be Determined by the City. Waiver of Subrogation required	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	☐ 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							
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 City as an additional insured	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: \$5,000,000 each occurrence \$5,000,000 aggregate City as an additional insured							



**RFQ PK-10 ANNUAL FIREWORKS DISPLAY
PRICE SHEET**

Item No.	Description	Total Cost
1	July 4th, 2027 Fireworks Display	
2	July 4th, 2028 Fireworks Display	
3	July 4th, 2029 Fireworks Display	
4	July 4th, 2030 Fireworks Display	
	TOTAL	\$ 0.00

From: [Cox, Jennifer](#)
To: [Wiggins, Teresa](#)
Bcc: ["info@pyrotecnico.com"; "zambelli@zambellifireworks.com"; "charlesm@pyroproductions.com"; "info@explosivetouch.com"](#)
Subject: City of Port Orange Request for Quote
Date: Wednesday, July 15, 2026 11:26:00 AM
Attachments: [PR-10 Fireworks.pdf](#)
[Pricing sheet.pdf](#)

Good morning,

Please see the attached request for quote and price sheet for our annual July 4th fireworks. We are requesting a 2-year contract with 2 optional 1-year renewals. The Fireworks show is on the 4th of July at 9:00 pm each year.

If you have any questions, email them to jcox@port-orange.org. If you are unable to quote this, please send me an email so we can update our records.

Thank you.

Jennifer Cox

Operations Support Administrator
Parks and Recreation
1395 Dunlawton Ave
Port Orange, FL 32129
386-506-5852



2026 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L18000179639

Entity Name: EXPLOSIVE TOUCH ENTERPRISES LLC

Current Principal Place of Business:

4260 AMELIA PLANTATION CT.
VERO BEACH, FL 32967

Current Mailing Address:

4260 AMELIA PLANTATION CT.
VERO BEACH, FL 32967 US

FEI Number: 83-1379800

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

UNITED STATES CORPORATION AGENTS, INC.
476 RIVERSIDE AVE.
JACKSONVILLE, FL 32202 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: CHEYENNE MOSLEY, US CORP. AGENTS

02/25/2026

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title AMBR
Name WEPPEL, ELWOOD J IV
Address 4260 AMELIA PLANTATION CT.
City-State-Zip: VERO BEACH FL 32967

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ELWOOD J. WEPPEL IV

PRESIDENT/OWNER

02/25/2026

Electronic Signature of Signing Authorized Person(s) Detail

Date

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

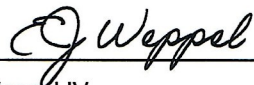
STATE OF FLORIDA §
 §
COUNTY OF VOLUSIA §

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

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

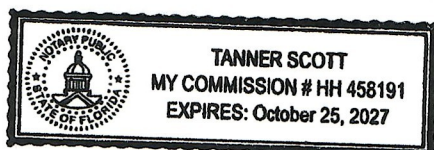
Further Affiant sayeth not.

Date: October 2nd, 2025

Signed: 
Print Name: EJ Weppel IV
Title: President

SUBSCRIBED AND SWORN before me by means of [XX] physical presence or [] online notarization on the 2nd day of October, 2025 by EJ Weppel as President on behalf of Explosive Touch Enterprises LLC. who is personally known to me or who has produced _____ as identification.

(Notary Seal)




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



BLAISE INGOGLIA
CHIEF FINANCIAL OFFICER

**STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION**

*** * CERTIFICATE OF ELECTION TO BE EXEMPT FROM FLORIDA WORKERS' COMPENSATION LAW * ***

NON-CONSTRUCTION INDUSTRY EXEMPTION

This certifies that the individual listed below has elected to be exempt from Florida Workers' Compensation law.

EFFECTIVE DATE: 6/18/2026

EXPIRATION DATE: 6/17/2028

PERSON: ELWOOD J WEPPEL IV

EMAIL: INFO@EXPLOSIVETOUCH.COM

FEIN: 831379800

BUSINESS NAME AND ADDRESS:

EXPLOSIVE TOUCH ENTERPRISES LLC

4260 AMELIA PLANTATION COURT

VERO BEACH, FL 32967

This certificate of election to be exempt is NOT a license issued by the Department of Business and Professional Regulation. To determine if the certificate holder is required to have a license to perform work or to verify the license of the certificate holder, go to www.myfloridalicense.com.

IMPORTANT: Pursuant to subsection 440.05(13), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter. Pursuant to subsection 440.05(11), F.S., Certificates of election to be exempt issued under subsection (3) apply only to the corporate officer named on the notice of election to be exempt. Pursuant to subsection 440.05(12), F.S., notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a certificate at any time for failure of the person named on the certificate to meet the requirements of this section.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B6f) Approval of the First Amendment to the Relocation and Reconstruction Agreement with Lamar Outdoor Advertising

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve the First Amendment to the Relocation and Reconstruction Agreement with Lamar Outdoor Advertising, subject to the approval of Ordinance No. 2026-9, and authorizing the Mayor and City Clerk to execute the Agreement

SUMMARY: In accordance with Chapter 15 of the City's Land Development Code (LDC), Lamar Outdoor Advertising (Lamar) is requesting approval of the First Amendment to the Relocation and Reconstruction Agreement for the relocation and reconstruction of existing billboard structures along I-95 and Ridgewood Avenue.

In 2025, the City Council approved a Relocation and Reconstruction Agreement with Lamar Outdoor Advertising to allow for the following changes:

- A. **Southbound I-95 On-Ramp:** The existing structure adjacent to the southbound I-95 on-ramp (5889 S. Williamson Boulevard), which currently contains one static sign face, will be removed and replaced with a new structure containing one digital sign face. In exchange, two existing sign faces will be permanently removed: one from the same parcel at 5889 S. Williamson Boulevard and one from 4901 S. Williamson Boulevard.
- B. **5865 Ridgewood Avenue:** The existing structure, which currently contains four static sign faces, will be removed and replaced with a new structure featuring two digital sign faces, one oriented north and one oriented south. Landscaping will also be installed around the base of the structure. The installation, ongoing maintenance, and any necessary replacement of the landscaping will be the responsibility of Lamar Outdoor Advertising.

As part of the First Amendment to the Relocation and Reconstruction Agreement, Lamar Outdoor Advertising is requesting modifications to the structures previously approved under the 2025 agreement. The proposed modifications, which are in accordance with the requirements of Chapter 15 of the LDC and the proposed text amendments to Chapter 15 included in Ordinance No. 2026-9, which is also on this agenda for second reading, are as follows:

- A. **Southbound I-95 On-Ramp** (5889 S. Williamson Boulevard): The replacement

structure would be 30 feet tall, an increase from the 25-foot height previously approved under the 2025 agreement.



Concept photo of a proposed 30-foot-tall structure at the I-95 southbound on-ramp location.

- B. **5865 Ridgewood Avenue (See Exhibit D):** Each digital sign face would measure 380 square feet, an increase from the 246-square-foot sign faces previously approved under the 2025 agreement.



Concept photo of the proposed structure with one digital sign face on each side, where the proposed digital sign face area does not exceed the maximum allowable digital sign face area of 380 square feet.

- C. **Digital Billboard Lighting Standards:** The First Amendment would clarify the applicable lighting requirements for digital billboards under the LDC. The LDC establishes two separate lighting standards applicable to digital billboard signs. The First Amendment would incorporate and clarify the applicability of both existing LDC lighting standards to the digital billboards subject to the Relocation and Reconstruction Agreement. No new lighting standard is being established through the First Amendment.

1. **Foot-Candle Requirement:** Chapter 15 of the LDC establishes a maximum illumination level of 0.3 foot-candles above ambient light for digital signs. The provision also establishes a measurement procedure for determining compliance, including measuring ambient light with the sign turned off and the sign's light output with the sign displaying a solid white image. The difference between the two measurements shall not exceed 0.3 foot-candles. The measurement distance is determined based on the

sign area using the formula provided in the LDC.

2. **NITS Requirement:** Chapter 15 of the LDC also establishes an additional lighting standard specifically applicable to digital billboards. This provision regulates the LED display's brightness by establishing maximum daytime and nighttime levels. The NITS requirement was added to the LDC in 2025 and does not replace, remove, or modify the existing foot-candle requirement. This is a separate additional requirement.

No other changes to the terms, conditions, or requirements of the 2025 Relocation and Reconstruction Agreement are proposed in Lamar's requested First Amendment.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	First Amendment to the Billboard Relocation and Reconstruction Agreement	First Amendment to the Billboard Relocation and Reconstruction Agreement .pdf
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Amanda Bonin	Created/Initiated - 08/28/2026
Tim Burman	Approved - 08/28/2026
Shannon Balmer	Approved - 09/04/2026
Wayne Clark	Final Approval - 09/04/2026

FIRST AMENDMENT TO
BILLBOARD RELOCATION AND RECONSTRUCTION AGREEMENT

THIS FIRST AMENDMENT TO BILLBOARD RELOCATION AND RECONSTRUCTION AGREEMENT (the "Amendment") is made and entered into this ____ day of _____, 2026 (the "Effective Date"), by and between the City of Port Orange, Florida, a municipal corporation whose address is 1000 City Center Circle, Port Orange, FL 32129 (the "City") and Lamar Company, L.L.C., a Louisiana limited liability company, whose address is 5321 Corporate Blvd., Baton Rouge, LA 70808 (the "Billboard Owner").

WHEREAS, the City and the Billboard Owner entered into that certain Billboard Relocation and Reconstruction Agreement dated October 7, 2025, attached hereto as Exhibit "A" (the "Agreement"); and

WHEREAS, the City and the Billboard Owner seek to amend the Agreement to modify certain dimensional requirements applicable to the Replacement Billboards, as defined therein; and

WHEREAS, the City and the Billboard Owner wish to continue on with all other terms and conditions of the Agreement not modified herein.

NOW, THEREFORE, in consideration of these premises and undertakings herein contained, the City and the Billboard Owner hereby amend the Agreement upon the following terms and conditions:

Section 3.3 of the Agreement is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in ~~STRIKETHROUGH~~]

3.3 In furtherance of the overall objectives of this Agreement and pursuant to Florida Statutes §70.20 and the Reconstruction Program and the objectives set forth in each of them, the City has agreed to permit the relocation and reconstruction of the Replacement Billboards at the Designated Locations identified in **Exhibit "A"** for the purposes of erecting, installing and maintaining three digital (LED) sign faces and supporting digital sign structures (collectively defined as "**Digital Sign Faces**"), subject to the following:

- A. A reconstructed sign can only be located on property that abuts Ridgewood Avenue or the I- 95 right-of-way, or is within the I-95 right-of-way. A reconstructed sign cannot be located on property within a residential zoning district.
- B. The sign face for the Replacement Billboards shall not exceed the total combined sign area of the sign face(s) removed in the same facing direction from the same property and location or shall not exceed three hundred and eighty (380) square feet of sign area, whichever is less, ~~square footage of the largest sign face removed~~ as part of this Agreement.
- C. Structural components surrounding the reconstructed sign face shall not exceed a size of ten percent of the sign face.
- D. The reconstructed sign face with digital change copy, shall not be less than eight-

second intervals, and the maximum transition time between messages shall not exceed one second.

- E. The digital reconstructed sign face shall provide a high-resolution picture quality with pixel spacing of 20 millimeters or less. Messages shall not display any illumination that moves, appears to move, flashes, scrolls, or changes in intensity during the static display period, but static graphic pictures may be displayed with no limitations on color. Messages shall not operate at a brightness level of more than 5,000 ~~foot-candles~~nits during the day and 500 ~~foot-candles~~nits from dusk to dawn. Each digital sign shall have a light-sensing device to adjust the brightness of the sign face as ambient light conditions change. A malfunctioning sign face must be turned off or display a blank screen.
- F. In accordance with Chapter 15, Section 9(a)(5), Land Development Code of the City of Port Orange, Florida, a digital sign shall not operate at brightness levels of more than 0.3 foot-candles above ambient light as measured using a foot candle (Lux) meter at a preset distance depending on sign area. Illuminance measurement requires two steps: First—ambient light shall be measured with the sign turned off. Second—sign light output shall be measured with the sign turned on as a solid white display. The difference between the two measurements shall be 0.3 foot-candles or less. The distance at which to take measurements is calculated with the following formula and rounded to the next whole number: Measurement distance = $\sqrt{\text{Area of sign square feet} \times 100}$.
- G. The tallest portion of the reconstructed sign, including appurtenances, shall not exceed the current height of the sign on the same property ~~and same location~~ as the sign being removed or 30 feet, whichever is greater in height.
- H. All new utilities to the reconstructed sign shall be underground.
- I. In accordance with Chapter 13, Section 5(a)(2)(b), Land Development Code of the City of Port Orange, Florida, Billboard Owner shall provide a landscape and irrigation plan for the sign to be located along Ridgewood Avenue designed to beautify and enhance the appearance of the reconstructed sign and the requisite supporting sign structure as well as screen the monopole and other supporting sign structures, contemplating the installation of podocarpus hedges along the signage areas. Billboard Owner shall maintain said plan in compliance with the City LDC.

NO OTHER MODIFICATIONS

Except as otherwise expressly provided for herein, the Agreement shall continue in full force and effect.

[Signature pages following]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the Effective Date shown above.

“CITY”

Signed, sealed and delivered in the presence of:

CITY OF PORT ORANGE, FLORIDA,
a municipal corporation

Witness 1

By: _____
Scott Stiltner, Mayor

Print Name of Witness 1
1000 City Center Circle
Port Orange, FL 32129

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

Witness 2

(SEAL)

Print Name of Witness 2
1000 City Center Circle
Port Orange, FL 32129

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026 by Scott Stiltner, as Mayor and Robin L. Fenwick, as City Clerk, both of the **CITY OF PORT ORANGE, FLORIDA**, a municipal corporation, who acknowledged that they are duly authorized to execute the foregoing on behalf of the City, and who are ☐ personally known to me or ☐ produced _____ as identification.

(SEAL)

Notary Public Signature

Name (typed, printed, or stamped)

Commission No: _____

My Commission Expires: _____

“BILLBOARD OWNER”

Signed, sealed and delivered in the presence of:

Witness 1

Print Name of Witness 1

Address of Witness 1

Witness 2

Print Name of Witness 2

Address of Witness 2

By: LAMAR COMPANY, L.L.C., a
Louisiana limited liability company

By: LAMAR MEDIA CORP., its sole
managing member

Signature: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ as _____ of LAMAR MEDIA CORP., as sole managing member of LAMAR COMPANY, L.L.C.. He or she is ☐ personally known to me or ☐ produced _____ as identification and did not take an oath.

(SEAL)

Notary Public Signature

Name (typed, printed, or stamped)

Commission No: _____

My Commission Expires: _____

Exhibit “A”
The Agreement

BILLBOARD RELOCATION AND RECONSTRUCTION AGREEMENT

THIS RELOCATION AND RECONSTRUCTION AGREEMENT (this "Agreement") is made and entered into as of this 7 day of October 2025 (the "Effective Date"), by and between the City of Port Orange, Florida, a municipal corporation whose address is 1000 City Center Circle, Port Orange, FL 32129 (the "City"), and Lamar Company, L.L.C., whose address is 5321 Corporate Blvd., Baton Rouge, LA 70808 ("the Billboard Owner").

RECITALS:

WHEREAS, the Land Development Code of the City of Port Orange, Florida (the "City LDC") Chapter 15, Entitled "Signs" (the "Sign Code"), regulates the use and operation of signs throughout City; and

WHEREAS, in an effort to reduce the number of legally existing nonconforming signs located within the City, Section 14(f) of the Sign Code allows a legally existing nonconforming billboard static sign face to be reconstructed with a digital sign face in exchange for removing a minimum of two legally existing nonconforming billboard sign faces located within the City of Port Orange, pursuant to the authority set forth in Section 70.20, Florida Statutes and the City LDC, subject to a reconstruction agreement containing all of the requirements set forth in Section 14(f) of the Sign Code ("Reconstruction Program"); and

WHEREAS, the City has been authorized by the Florida Legislature, pursuant to Section 70.20, Florida Statutes to enter into "relocation and reconstruction agreements" that allow governmental entities to undertake public goals without the expenditure of public funds while allowing the continued maintenance of private investment and signage as a medium of commercial and non-commercial communication and authorizes such "relocation and reconstruction" of billboards by agreement, ordinance, or resolution; and

WHEREAS, the Reconstruction Program is intended to be supplemental to state law, including Section 70.20, Florida Statutes, and to be construed to complement and be reconciled with state law, where possible; and

WHEREAS, the Billboard Owner currently owns and operates, with the appropriate Florida Department of Transportation ("FDOT") and City permits, numerous existing, nonconforming billboard signs throughout the City since before the enactment of the Sign Code; and

WHEREAS, the Billboard Owner is the owner of the legally existing, nonconforming four (4) billboard sign faces located at the intersection of Ridgewood Avenue and Nova Road on Parcel No. 6314-03-14-0080, along with the one (1) billboard sign face located along Interstate 95 near the Dunlawton Avenue and Taylor Road interchange on Parcel No. 6319-00-00-0053, and one (1) billboard sign face located along Interstate-95 northbound on Parcel No. 6212-00-00-0021 (collectively, the "Existing Billboards"), all within the jurisdiction of the City; and

WHEREAS, Billboard Owner desires to remove the six (6) Existing Billboard sign faces in exchange for the Billboard Owner's right to install, reconstruct, and operate three (3) replacement digital (LED) billboard sign faces along with the requisite supporting sign structures in locations along Interstate 95 and Ridgewood Avenue in accordance with the terms of this Agreement (the "Replacement Billboards") and pursuant to the Reconstruction Program and Section 70.20, Florida

Statutes. For further clarification, the term Replacement Billboards is defined herein to expressly include the three digital (LED) sign faces and the requisite supporting sign structures to be constructed in the locations shown in Exhibit "A" and pursuant to this Agreement; and

WHEREAS, the City has determined that it is a good public purpose to reduce or eliminate nonconformities; and

WHEREAS, Section 70.20, Florida Statutes, expressly authorizes and encourages voluntary agreements of this type by empowering the City and the owners of billboards to enter into relocation and reconstruction agreements, on mutually agreeable terms, that allow the City to accomplish its public purpose while allowing the continued maintenance of private investment in outdoor advertising signs as a medium of commercial and non-commercial communication; and

WHEREAS, the City desires to allow the Billboard Owner to remove the Takedown Billboards, defined hereinbelow, and construct the Replacement Billboards in furtherance of the described public purpose and pursuant to the Reconstruction Program and Section 70.20, Florida Statutes; and

WHEREAS, to further implement the provisions of Section 70.20, Florida Statutes, and the Reconstruction Program, the City and Billboard Owner desire to provide the terms and conditions under which the Billboard Owner will be permitted to remove the Takedown Signs and to install, construct and operate the Replacement Billboards; and

WHEREAS, the City finds that the provisions of this Agreement are in the public interest.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Billboard Owner agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated into and made part of this Agreement.
2. **Waiver of Just Compensation.** In consideration of the rights granted, the Billboard Owner hereby expressly waives any right to receive from the City just compensation for the removal of the billboard sign faces and supporting sign structures associated with the Takedown Billboards identified in **Exhibit "A"** whether such claim for just compensation is predicated on Sections 70.001, 70.20(9), 479.15(2) or 479.24, Florida Statutes.
3. **70.20 Replacement Digital Billboard/ Voluntary Removal of Takedown Billboards.**

3.1 Contemporaneously with the submission of the Billboard Owner's permit applications to the City for installation, construction and operation of the Replacement Billboards, the Billboard Owner shall also apply for demolition permits to remove the Existing Billboard sign faces, described as takedown billboards in **Exhibit "A"** which consist of six (6) externally illuminated static sign faces (collectively the **"Takedown Billboards"**), in accordance with the provisions of **Section 3.2** hereof, which applications the City shall consider for approval within thirty (30) days after submission of complete permit applications for same. Notwithstanding anything to the contrary, and in consideration for the Billboard Owner's removal of the Takedown Billboards, the Billboard Owner shall be permitted to relocate and/or reconstruct the Replacement Billboards within the same general locations and on the same property as the respective Takedown

Billboards, and described as the LED locations in **Exhibit "A"** hereto (the "**Designated Location**) (**Collectively, "Takedown, Relocation and Reconstruction Plan"**). Billboard Owner acknowledges and agrees that at the time of submission of permit applications for the installation, construction, and operation of the Replacement Billboards, said permits shall be required to comply with the then current federal and state laws, and City Ordinances. If the Billboard Owner is unable to obtain all necessary permits and approvals for the construction, maintenance and operation of the Replacement Billboards, the Billboard Owner shall be relieved of any and all obligations under this Agreement to remove the Takedown Billboards and shall have the right to terminate this Agreement upon thirty (30) day's written notice to the City.

3.2 Within fifteen (15) days after the Billboard Owner's receipt of all necessary final governmental approvals, authorizations and permits required from the City and FDOT for the construction, installation and operation of the Replacement Billboards (the "**Governmental Approvals**"), the Billboard Owner shall, at its sole cost and expense, permanently and voluntarily remove (if not already theretofore removed) the sign faces and sign structures comprising the Takedown Billboards identified in **Exhibit "A"** in exchange for reconstruction of the Replacement Billboards.

3.3 In furtherance of the overall objectives of this Agreement and pursuant to Florida Statutes §70.20 and the Reconstruction Program and the objectives set forth in each of them, the City has agreed to permit the relocation and reconstruction of the Replacement Billboards at the Designated Locations identified in **Exhibit "A"** for the purposes of erecting, installing and maintaining three digital (LED) sign faces and supporting digital sign structures (collectively defined as "**Digital Sign Faces**"), subject to the following:

- A. A reconstructed sign can only be located on property that abuts Ridgewood Avenue or the I-95 right-of-way, or is within the I-95 right-of-way. A reconstructed sign cannot be located on property within a residential zoning district.
- B. The sign face for the Replacement Billboards shall not exceed the square footage of the largest sign face removed as part of this Agreement.
- C. Structural components surrounding the reconstructed sign face shall not exceed a size of ten percent of the sign face.
- D. The reconstructed sign face with digital change copy, shall not be less than eight-second intervals, and the maximum transition time between messages shall not exceed one second.
- E. The digital reconstructed sign face shall provide a high-resolution picture quality with pixel spacing of 20 millimeters or less. Messages shall not display any illumination that moves, appears to move, flashes, scrolls, or changes in intensity during the static display period, but static graphic pictures may be displayed with no limitations on color. Messages shall not operate at a brightness level of more than 5,000 foot-candles during the day and 500 foot-candles from dusk to dawn. Each digital sign shall have a light-sensing device to adjust the brightness of the sign face as ambient light conditions change. A malfunctioning sign face must be turned off or display a blank screen.
- F. The tallest portion of the reconstructed sign, including appurtenances, shall not exceed the current height of the sign on the same property and same location as the sign being removed.
- G. All new utilities to the reconstructed sign shall be undergrounded.
- H. In accordance with Chapter 13, Section 5(a)(2)(b), Land Development Code of the City of Port Orange, Florida, Billboard Owner shall provide a landscape and irrigation plan for the sign to be located along Ridgewood Avenue designed to beautify and enhance the appearance of the reconstructed sign and the requisite supporting sign structure as well as screen the monopole and other supporting sign structures, contemplating the installation of podocarpus hedges along the signage areas. Billboard Owner shall maintain said plan in compliance with the City LDC.

3.4 The Billboard Owner shall make the Replacement Billboards available for the dissemination of public service information as follows: (1) during times of declared weather emergencies affecting the City, Billboard Owner will make the Replacement Billboards available for the sole and limited purpose of communicating emergency information to the City's citizens and the traveling public, in accordance with the terms and conditions of the emergency alert notification program (the "**Emergency Notification Program**") adopted by the Florida Outdoor Advertising Association (the "**FOAA**") and the Florida Division of Emergency Management (the "**FDEM**"); (2) the Billboard Owner shall make the Replacement Billboards available for the display of "amber alerts" issued by the Florida Department of Law Enforcement (the "**FDLE**"), when it is determined, pursuant to guidelines and procedures already in place between the FDLE and the outdoor advertising industry to identify appropriate situations, duration and sign location, that display of the "amber alert" on the Replacement Billboards would provide information to the traveling public that could be instrumental in assisting authorities in resolving an abduction; and (3) during times of declared emergencies by the Volusia County Emergency Management Division affecting the City's citizens and traveling public.

3.5 The Billboard Owner agrees not to permit advertising that promotes adult entertainment (i.e. containing or relating to nudity, sexual activity or pornography) uses on the Replacement Billboards.

4. **Indemnity and Hold Harmless.** This Agreement contemplates the removal of existing billboard signs in exchange for the Billboard Owner's right to erect, install, operate, and maintain Replacement Billboards in accordance with the terms and conditions set forth in this Agreement as well the applicable local, state, and federal laws. It is recognized that the Billboard Owner may have lease agreements with property owners (the "**Property Owners**") relating to such existing signs that the Billboard Owner is voluntarily obligating itself to remove under the terms of this Agreement. Consequently, the Billboard Owner agrees to indemnify the City from any lawsuit, and shall defend with counsel designated by the Billboard Owner and reasonably acceptable to the City, and hold the City harmless against any claim asserted by an affected Property Owner arising from the removal of the Takedown Billboards identified in Exhibit "A" hereto that are removed after the date of this Agreement. In the event of litigation or an administrative proceeding concerning the validity or enforceability of the Relocation and Reconstruction Agreement or the enabling City Ordinance, the City shall be entitled to bring in the Billboard Owner as a party defendant in such a proceeding to defend or otherwise uphold the terms and conditions of this Relocation and Reconstruction Agreement.

5. **Assignments Binding Nature.** This Agreement will be binding upon and will inure to the benefit of and be enforceable by, the parties and their respective legal representatives, successors, or permitted assigns. The Billboard Owner agrees not to assign, transfer or convey (collectively "assignment") any ownership in the Replacement Billboards unless the assignee shall execute an agreement to be bound by the terms and conditions of this Agreement.

6. **Governing Law/Jurisdiction/Venue.** This Agreement shall be construed and controlled by the laws of the State of Florida, and the parties further consent to jurisdiction, if available, and venue in the federal district courts sitting in Volusia County, Florida. If, and only if, the federal district court lacks jurisdiction, the parties' consent to jurisdiction and venue in the state circuit court in Volusia County, Florida. The Billboard Owner waives all defenses of lack of personal jurisdiction *and forum non conveniens*. Process may be served on either party in the manner authorized by applicable law or court rule. THE PARTIES EACH HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTES RELATING TO OR ARISING OUT OF

THIS AGREEMENT.

7. **Default.** In the event any party is in default of any provision hereof, the non-defaulting party, as a condition precedent to the exercise of its remedies, shall be required to give the defaulting party or parties written notice of same pursuant to this Agreement. The defaulting party or parties shall have fifteen (15) business days from the receipt of such notice to cure the default or, if the default cannot be cured within 15 business days, to commence and diligently pursue a cure. If the defaulting party or parties timely cure the default, the default shall be deemed waived, and this Agreement shall continue in full force and effect. If the defaulting party or parties do not timely cure such default, the non-defaulting party or parties shall be entitled to pursue its/their remedies available at law or equity.

In the event that Billboard Owner defaults under this Agreement by failing to remove any of the Takedown Billboards as required hereunder, the parties expressly agree and stipulate that money damages would be inadequate to compensate the City for such default. Accordingly, in the event of such default Billboard Owner and the City stipulate and agree that the City shall be entitled to seek injunctive relief to secure Billboard Owner's compliance with its removal obligations provided herein.

8. **Future Billboard Regulations.**

a.) The Billboard Owner agrees to comply with and be bound by all federal and State of Florida laws, and Code of Ordinances, City of Port Orange, Florida ("City Ordinances"), as may be amended, and to operate the Replacement Billboards in accordance with the terms of this Relocation and Reconstruction Agreement.

b.) The City acknowledges and agrees that the billboards listed on **Exhibit "A"**, including the Replacement Billboards and Digital Sign Faces to be constructed pursuant to this Agreement, are legally nonconforming billboards under the City Code (the "**Legal Nonconforming Billboards**").

9. **Authority; Rights; Severability.** The parties agree and acknowledge:

9.1 This Agreement was negotiated and entered into by the City pursuant to the authority conferred upon it by law including Section 70.20, Fla. Statutes, which provides in part that:

"municipalities... are specifically empowered to enter into relocation and reconstruction agreements on whatever terms are agreeable to the sign owner and the municipality ... involved and to provide for relocation and reconstruction of signs by agreement, ordinance, or resolution."

Fla. Stat. § 70.20(1);

9.2 That the rights conferred upon the Billboard Owner under this Agreement are vested as of the Effective Date, and as such, any future sign regulation that may otherwise alter the terms of this Agreement, or diminish the Billboard Owner's rights with respect to maintaining and operating the Replacement Billboards and Digital Sign Faces, shall respect and preserve such vested rights. However, Billboard Owner acknowledges that any future repair or reconstruction of Replacement Billboards would be subject to the then current sign regulations and being subject to said regulations shall not be considered a breach or alteration of the vested rights conferred herein.

9.3 The parties covenant and agree that they will not initiate, pursue, assist, participate in (except to oppose or defend against) or in any way aid or support any action or proceeding of any type of nature challenging the constitutionality, legality, or enforceability of this Agreement, or having the effect of rendering this Agreement void or unenforceable, or that would negatively impact the validity or enforceability of this Agreement in any way. The foregoing shall not prevent any party from initiating or pursuing legal action based on the other party's default under this Agreement. In the event that any portion of this Agreement shall be held invalid, unenforceable or both resulting in the forced removal of the Replacement Sign, the parties shall be released from any further obligations under this Agreement and shall be returned to their respective positions as they existed just prior to the execution of this Agreement, including, but not limited to, Billboard Owner's right to re- erect the Existing Signs at its current location.

9.4 That, if any term or provision of this Agreement or the application of it to any person or circumstance is declared or held by a court of competent jurisdiction to be illegal, invalid, or unenforceable as a result of a third-party challenge, then said provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this Agreement has valid purposes, which include *inter alia* facilitating the net reduction of billboard signs in the City in order to preserve and improve urban aesthetics and traffic safety while also properly balancing private property and commercial speech rights.

9.5 That nothing in this Agreement shall be read to impermissibly interfere with the lawful exercise of the City's police powers to protect the public from serious threats to health or safety; and

9.6 That this paragraph shall apply to all portions of this Agreement; and to the extent any language in this Agreement is deemed inconsistent or contrary to this paragraph, the language contained in this paragraph shall control.

10. **Modification.** This Agreement may only be modified or amended by the express, written consent of the parties to this Agreement, executed with the same formalities that this Agreement was executed. The Agreement shall remain unmodified and in full force and effect, and the parties hereby ratify their respective obligations hereunder.

11. **Entire Agreement.** The Agreement, and all Exhibits attached hereto, shall constitute the entire agreement among the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications.

12. **Representations and Warranties.** The Billboard Owner hereby represents and warrants that it: (a) is a corporation in good standing under the laws of the State of Delaware; (b) is duly authorized to transact businesses in the State of Florida; and (c) has taken all corporate actions necessary to authorize execution and performance of this Agreement. The City hereby represents and warrants that: (a) it is empowered to enter into this Agreement; and (b) this Agreement has been duly authorized by the Council of the City of Port Orange pursuant to the procedural requirements of Florida law.

13. **Agreement Running with the Billboard Owner.** This Agreement shall run with the Billboard Owners and the locations permitted hereunder, and shall be binding upon the parties hereto, their successors and assigns.

14. **No Third Party Beneficiaries.** It is expressly agreed and understood that there are no third parties intended to be benefited by this Agreement or any of the terms, provisions, rights or benefits conferred in this Agreement, and no private right of action is intended to be created by the Agreement in any third party.

15. **Miscellaneous Provisions.**

15.1 Notices. All notices, demands or other communications required, contemplated or required to be given to either party to another under this agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, to the following address:

City of Port Orange:

City of Port Orange
Attn: City Manager
1000 City Center Circle
Port Orange, Florida 32129

With a copy to:

City of Port Orange
City Attorney
1000 City Center Circle
Port Orange, Florida 32129

Billboard Owner:

Cobb Cole Law Firm
Attn: Rob Merrell III
One Daytona Boulevard, Suite 600
Daytona Beach, FL 32114

With a copy to:

Lamar Company, L.L.C
Attn: Peter Costanza, GM
1140 N. Williamson Blvd., Ste. 100
Daytona Beach, FL 32114

15.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which constitute the same Agreement.

15.3 The headings contained herein are for the convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the effective date shown above.

WITNESSES:
(as to both)

CITY:


Printed Name: Tracee Cody
1000 City Center Circle
Port Orange, FL 32129

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

By: 
Scott Stiltner, Mayor


Printed Name: Matt Jones
1000 City Center
Port Orange, FL 32129

Attest: 
Robin L. Fenwick, MMC, City Clerk

(SEAL)



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 7 day of October, 2025, by Scott Stiltner, as Mayor and Robin L. Fenwick, as City Clerk, both of the City of Port Orange, Florida, who acknowledged that they are duly authorized to execute the foregoing on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ are personally known to me, or ☐ has produced _____ as identification.

Notary Public Signature

(SEAL)


Signature of person taking acknowledgment

Tracee Cody
Name, typed, printed or stamped

My Commission Expires: May 11, 2026



TRACEE CODY
Commission # HH 263572
Expires May 11, 2026

BILLBOARD OWNER:

By: **Lamar Company, L.L.C.**,
a Louisiana limited liability company

WITNESSES:

Erin Gatz
Print Name: Erin Gatz
1140 N. Williamson Blvd.
Daytona Bch, FL 32114

SJ Sedan
Print Name: SJ Sedan
1140 N Williamson Blvd Ste 100
Daytona Beach, FL 32114

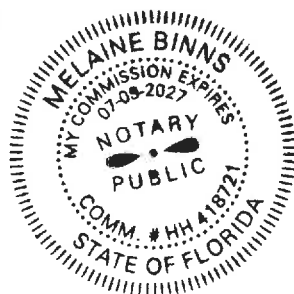
By: **Lamar Media Corp.**, its sole managing
member

Signature: *Peter Costanza*
Print Name: Peter Costanza
Title: VP/GM

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or
☐ online notarization this 2nd day of October, 2025, by Peter Costanza,
VP/General Mgr of Lamar Media Corp., as sole managing member of Lamar Company, L.L.C, who ☒ are
personally known to me, or ☐ has produced _____ as identification.

(SEAL)



Notary Public Signature

Melaine Binns
Signature of person taking acknowledgment

Melaine Binns
Name, typed, printed or stamped

My Commission Expires: July 9, 2025

EXHIBIT "A"
(7 pages)

TO BE REMOVED
Visible from I-95

Address:
4901 S. Williamson Blvd.
Parcel ID: 6212-000-0021



EXHIBIT "A" CONT.

TO BE REMOVED

**Address:
1415-5889 S. Williamson Blvd.
Parcel ID: 6319-00-00-0053**



EXHIBIT "A" CONT.

**REPLACED WITH
DIGITAL SIGN
Visible from I-95**

**Address:
1415-5889 S. Williamson Blvd.
Parcel ID: 6319-00-00-0053**



EXHIBIT "A" CONT.

TO BE REMOVED

**Address:
5865 Ridgewood Ave.
Parcel ID: 6314-03-14-0080**



EXHIBIT "A" CONT.

TO BE REMOVED

**Address:
5865 Ridgewood Ave.
Parcel ID: 6314-03-14-0080**



EXHIBIT "A" CONT.

**REPLACED WITH
DIGITAL SIGN**

**Address:
5865 Ridgewood Ave.
Parcel ID: 6314-03-14-0080**



EXHIBIT "A" CONT.

**REPLACED WITH
DIGITAL SIGN**

**Address:
5865 Ridgewood Ave.
Parcel ID: 6314-03-14-0080**





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B7) Resolution No. 26-38 - Approval of Florida Department of Transportation (FDOT) Locally Funded Agreement and associated Three Party Escrow Agreement to utilize Dewberry Engineering for plan update/post design services for the Dunlawton Avenue Turn Lanes Bundle Project (FDOT 449770-2-58/68) - Port Orange Project CD215

DEPARTMENT: Community Development

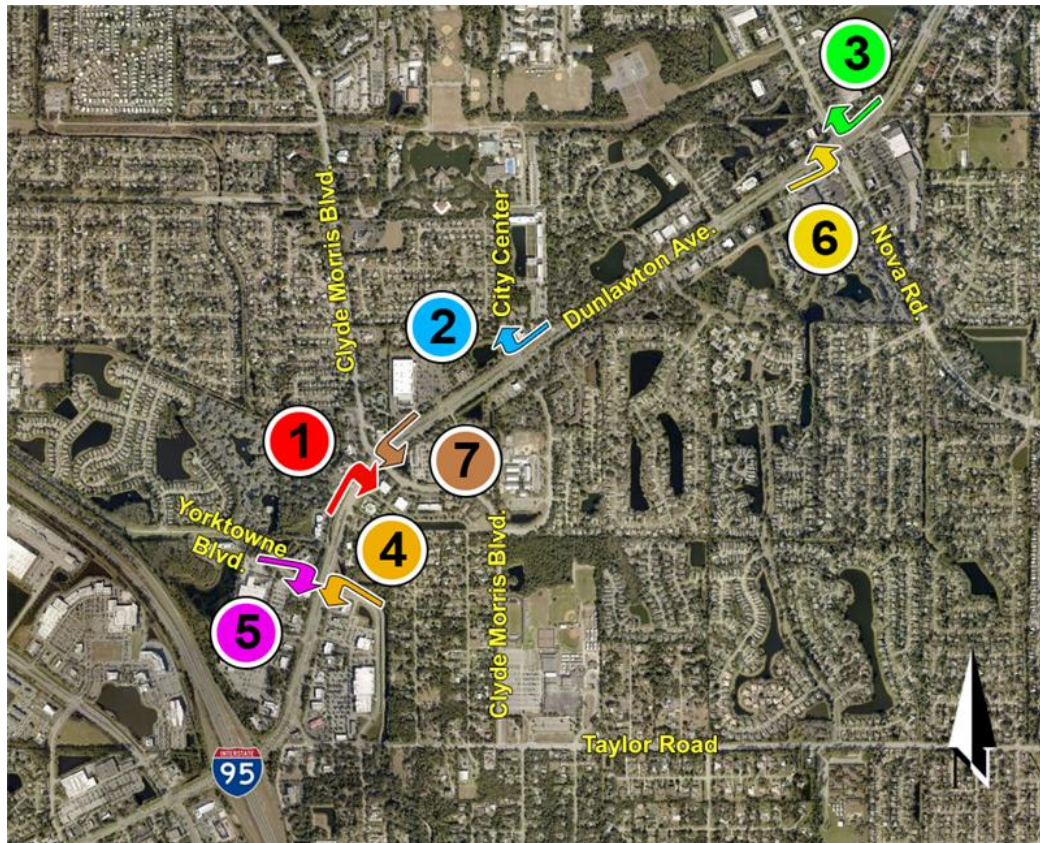
RECOMMENDED MOTION: Move to approve the Locally Funded Agreement and associated Three Party Escrow Agreement to utilize Dewberry for plan update/post design services for the Dunlawton Avenue Turn Lanes Bundle authorizing the Mayor and City Clerk to execute all necessary Agreements.

SUMMARY: On January 17, 2023, City Council approved Resolution No. 23-02 authorizing the execution of a Florida Department of Transportation (FDOT) Locally Funded Agreement (LFA) for the design of the Dunlawton Turn Lanes Bundle (FDOT Financial Project #449770; City of Port Orange Project CD215) utilizing FDOT District 5's continuing services design consultant, Dewberry Engineering, Inc. (Dewberry). The design plans were completed and approved by FDOT in January, 2025.

The Dunlawton Turn Lanes Bundle project consists of four (4) new turn lanes, three (3) extensions to existing turn lanes, and pedestrian improvements at intersections along the Dunlawton Avenue corridor to improve intersection capacity, reduce traffic delays, and enhance pedestrian safety. The proposed improvements include:

1. Eastbound right turn lane on Dunlawton Avenue at Clyde Morris Boulevard.
2. Westbound right turn lane on Dunlawton Avenue at City Center Parkway.
3. Westbound right turn lane on Dunlawton Avenue at Nova Road.
4. Eastbound right-turn lane on Yorktowne Boulevard at Dunlawton Avenue.
5. Extension of the existing westbound left-turn lane on Yorktowne Boulevard at Dunlawton Avenue.
6. Extension of the existing eastbound left-turn lane on Dunlawton Avenue at Nova Road.
7. Extension of the existing westbound left-turn lane on Dunlawton Avenue at Clyde

Morris Boulevard.



During the design phase, it was determined that two of the proposed turn lane improvements (Turn Lanes #1 and #3 described above) require the acquisition of additional right-of-way or easement for construction. The project is currently in the Right-of-Way phase, as approved by City Council at the May 5, 2026 meeting, with concurrence from FDOT. The City's right-of-way consultant is currently working to acquire the necessary right-of-way or easement. The project is fully funded for construction in FDOT's Fiscal Year 2026/2027 work program, with construction anticipated to begin in Spring 2027. The time frame between FDOT's concurrence of the design plans and May 2026 is attributed to coordination with FDOT regarding approval of the right-of-way phase of the project and securing a right-of-way consultant qualified for compliance with FDOT's Right of Way Procedures Manual and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

According to FDOT's procedures, once the required right-of-way or easements have been acquired, the 2025 design plans must be updated to incorporate the acquired right-of-way and easement areas and revised to comply with the current FDOT Fiscal Year 2026/27 design standards before construction begins.

FDOT's contract for design services with Dewberry is active until December 31, 2026. Therefore, to maintain design continuity and complete the required plan updates in the most economical manner, Staff requests approval of the Locally Funded Agreement with FDOT to engage Dewberry to perform the required plan update/post design services for the project they designed in 2025. The estimate of cost for the plan update/post design services is \$4,796.35 which the City will fully fund. The Locally

Funded Agreement stipulates that the City shall furnish to the FDOT an advance deposit in the amount of \$4,797.00 within fourteen (14) calendar days of the execution of the agreement. The payment of funds under the Locally Funded Agreement will be made directly to FDOT as provided in the attached Three Party Escrow Agreement. Funds are budgeted and available in CD215 for this purpose. Dewberry anticipates completing the required plan updates by the end of 2026, allowing the project to proceed to construction as scheduled.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 26-38 w exhibit	Resolution No. 26-38 w exhibit.pdf
2.	449770-2-62-02 LAP LFA - Design Services - City of Port Orange Agreement	449770-2-62-02 LAP LFA - Design Services - City of Port Orange Agreement.pdf
3.	449770-2 -Three Party Escrow Agreement	449770-2 -Three Party Escrow Agreement.pdf

Lisa Epstein	Created/Initiated - 07/01/2026
Tim Burman	Approved - 09/02/2026
Catrina Wilson	Approved - 09/02/2026
Sue Wang	Approved - 09/03/2026
Shannon Balmer	Approved - 09/10/2026
Wayne Clark	Final Approval - 09/10/2026

RESOLUTION NO. 26-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FPN 449770-2-62-02 FOR THE POST DESIGN SERVICES FOR THE PLANS TO THE DESIGN OF THE DUNLAWTON AVENUE TURN LANES VARIOUS LOCATIONS PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT AND THE ASSOCIATED ESCROW AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreement for necessary post design services for the plans to the design of the Dunlawton Avenue Turn Lanes Various Locations Bundle; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 449770-2-62-02.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the project FPN 449770-2-62-02, a copy of which is attached hereto as Exhibit "1", and the associated escrow agreement, if any.

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

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

Agency: City of Port Orange Vendor No.: F596000412018	Fund: LF Contract Amount: \$4,797.00	Financial Project No.: 449770-2-62-02
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT") and the CITY OF PORT ORANGE (hereinafter referred to as the "LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto as Exhibit "C", and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the LOCAL GOVERNMENT is undertaking a project: "Dunlawton Avenue Turn Lanes – Various Locations", said project having been given Financial Project Number (FPN) 449770-2-62-02, hereinafter referred to as the "Project," for which the LOCAL GOVERNMENT previously utilized the DEPARTMENT's continuing services consultant for the development of plans; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, in order to maintain uniformity of design throughout the Project and to provide for the post design services in a cost-effective manner, the LOCAL GOVERNMENT desires to have said post design services be performed by the Department's Continuing Services Consultant and to provide funding to the DEPARTMENT to be used for the post design services as described in Exhibit "A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the

LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall cause the post design services described in Exhibit "A" to be completed as part of the DEPARTMENT'S design services for the plans for the Dunlawton Avenue Turn Lanes – Various Locations project and to be constructed as a part of said Project.

3. The DEPARTMENT shall perform the post design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Participation by the LOCAL GOVERNMENT in the funds for the design phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the post design services is **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The Project is being funded by the LOCAL GOVERNMENT in the amount of **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)**. Said funds are programmed under Financial Project Number (FPN) 449770-2-62-02. As described in paragraph 4(C) below, the LOCAL GOVERNMENT agrees that it will provide the balance of the funding necessary to complete the Project.

(C) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **within fourteen (14) calendar days of the execution of this Agreement**, furnish the DEPARTMENT an advance deposit in the amount of **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)** for full payment of the estimated project cost for Locally Funded project number 449770-2-62-02. The advance deposit shall be the total estimated cost of the post design services.

(D) If the cost of post design services is in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT so that the total deposit is equal to the total cost of the post design services. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the cost of the post design services is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to a delay of the project.

(E) If the cost of the post design services is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the final design fee.

(F) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Consultant. The DEPARTMENT considers the Project complete when the final payment has been made to the Consultant, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(G) In the event the final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to section 55.03, F. S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

(H) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow

agreement between the LOCAL GOVERNMENT, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(I) Contact Persons:

DEPARTMENT

District 5 Local Government Agreements
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
(386) 943-5623
D5-LGA@dot.state.fl.us

LOCAL GOVERNMENT

Margaret Tomlinson
Construction & Engineering Manager
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5661
mtomlinson@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which

are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any Consultants and Subconsultants performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant/Subconsultant during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: Scott Stiltner

Name: Kellie Smith

Title: Mayor

Title: Director of Transportation Development

Attest:

Attest:

Robin L. Fenwick

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney
Shannon Balmer, Senior Assistant City Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

July 8, 2019

EXHIBIT “A”**SCOPE OF SERVICES**

The scope of the project is for the Engineer of Record, Dewberry Engineers, Inc. to provide support to the City by administering the construction contract through completion of the project, to include the following limited post-design services:

- Update all project design plans to current FDOT FY Standard Plans and Specifications for Road & Bridge Construction
- Update Construction Cost Estimate (based on FDOT Unit Prices)
- Update Construction Duration Calculation, if needed
- Update Specifications Package, if needed
- Update Bid Tab Schedule, if needed

The DEPARTMENT’S Continuing Services Consultant shall provide post design services as part of the design plans for Dunlawton Avenue Turn Lanes – Various Locations Project.

The remainder of this page intentionally left blank.

EXHIBIT "B"**ESTIMATE**

The estimate is based on Statewide and District Average Price.

ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT

Name of Project: SR 421 Dunlawton Avenue Turn Lanes Various Locations
 County: Volusia
 FPN: 449770-2-62-01
 FAP No.:

Consultant Name: Dewberry
 Consultant No.:
 Date: 8/20/2026
 Estimator: Alex Bitter

Staff Classification	Total Staff Hours From "SH Summary - Firm"	Project Manager 3	Eng 2	Eng Intern	Sr Eng Tech	Chief Scientist	Scientist	Env Specialist	Sr Eng 1				SH By Activity	Salary Cost By Activity	Average Rate Per Task
3. Project General Tasks	10	6	3	3	0	0	0	0	0	0	0	0	12	\$2,397.09	\$199.76
4. Roadway	11	1	3	5	2	1	1	0	0	0	0	0	13	\$1,829.76	\$140.75
5. Utilities	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
6. Structures	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
7. Signing and Marking	2	0	1	1	0	0	0	0	0	0	0	0	2	\$284.75	\$142.38
8. Signalization	2	0	1	1	0	0	0	0	0	0	0	0	2	\$284.75	\$142.38
9. Lighting	1	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
10.	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
Total Staff Hours	26	7	8	10	2	1	1	0	0	0	0	0	29		
Total Staff Cost		\$1,799.98	\$1,286.24	\$1,239.70	\$245.68	\$151.40	\$73.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$4,796.35	\$165.39

Check = \$4,796.35

Form Revised 04/04/06

Notes:

1. This sheet to be used by Prime Consultant to calculate the Grand Total fee.
2. Manually enter fee from each subconsultant. Unused subconsultant rows may be hidden.

SALARY RELATED COSTS: \$4,796.35
 OVERHEAD: 0.00% \$0.00
 OPERATING MARGIN: 0.0% \$0.00
 FCCM (Facilities Capital Cost Mor 0.000% \$0.00
 EXPENSES: 0.00% \$0.00

SUBTOTAL ESTIMATED FEE: \$4,796.35
 Subconsultant: Sub 1 \$0.00
 Subconsultant: Sub 2 \$0.00
 Subconsultant: Sub 3 \$0.00
 Subconsultant: Sub 12 \$0.00
SUBTOTAL ESTIMATED FEE: \$4,796.35
 Field Survey \$0.00
SUBTOTAL ESTIMATED FEE: \$4,796.35
 Optional Services \$0.00
GRAND TOTAL ESTIMATED FEE: \$4,796.35

The remainder of this page intentionally left blank.

EXHIBIT “C”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

Agency: City of Port Orange Vendor No.: F596000412018	Fund: LF Contract Amount: \$4,797.00	Financial Project No.: 449770-2-62-02
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT") and the CITY OF PORT ORANGE (hereinafter referred to as the "LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto as Exhibit "C", and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the LOCAL GOVERNMENT is undertaking a project: "Dunlawton Avenue Turn Lanes – Various Locations", said project having been given Financial Project Number (FPN) 449770-2-62-02, hereinafter referred to as the "Project," for which the LOCAL GOVERNMENT previously utilized the DEPARTMENT's continuing services consultant for the development of plans; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, in order to maintain uniformity of design throughout the Project and to provide for the post design services in a cost-effective manner, the LOCAL GOVERNMENT desires to have said post design services be performed by the Department's Continuing Services Consultant and to provide funding to the DEPARTMENT to be used for the post design services as described in Exhibit "A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the

LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall cause the post design services described in Exhibit "A" to be completed as part of the DEPARTMENT'S design services for the plans for the Dunlawton Avenue Turn Lanes – Various Locations project and to be constructed as a part of said Project.

3. The DEPARTMENT shall perform the post design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Participation by the LOCAL GOVERNMENT in the funds for the design phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the post design services is **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The Project is being funded by the LOCAL GOVERNMENT in the amount of **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)**. Said funds are programmed under Financial Project Number (FPN) 449770-2-62-02. As described in paragraph 4(C) below, the LOCAL GOVERNMENT agrees that it will provide the balance of the funding necessary to complete the Project.

(C) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **within fourteen (14) calendar days of the execution of this Agreement**, furnish the DEPARTMENT an advance deposit in the amount of **\$4,797.00 (Four Thousand Seven Hundred Ninety-Seven Dollars and No/100)** for full payment of the estimated project cost for Locally Funded project number 449770-2-62-02. The advance deposit shall be the total estimated cost of the post design services.

(D) If the cost of post design services is in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT so that the total deposit is equal to the total cost of the post design services. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the cost of the post design services is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to a delay of the project.

(E) If the cost of the post design services is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the final design fee.

(F) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Consultant. The DEPARTMENT considers the Project complete when the final payment has been made to the Consultant, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(G) In the event the final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to section 55.03, F. S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

(H) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow

agreement between the LOCAL GOVERNMENT, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(I) Contact Persons:

DEPARTMENT

District 5 Local Government Agreements
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
(386) 943-5623
D5-LGA@dot.state.fl.us

LOCAL GOVERNMENT

Margaret Tomlinson
Construction & Engineering Manager
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5661
mtomlinson@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which

are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any Consultants and Subconsultants performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant/Subconsultant during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: Scott Stiltner

Name: Kellie Smith

Title: Mayor

Title: Director of Transportation Development

Attest:

Attest:

Robin L. Fenwick

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney
Shannon Balmer, Senior Assistant City Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

July 8, 2019

EXHIBIT “A”**SCOPE OF SERVICES**

The scope of the project is for the Engineer of Record, Dewberry Engineers, Inc. to provide support to the City by administering the construction contract through completion of the project, to include the following limited post-design services:

- Update all project design plans to current FDOT FY Standard Plans and Specifications for Road & Bridge Construction
- Update Construction Cost Estimate (based on FDOT Unit Prices)
- Update Construction Duration Calculation, if needed
- Update Specifications Package, if needed
- Update Bid Tab Schedule, if needed

The DEPARTMENT’S Continuing Services Consultant shall provide post design services as part of the design plans for Dunlawton Avenue Turn Lanes – Various Locations Project.

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EXHIBIT "B"**ESTIMATE**

The estimate is based on Statewide and District Average Price.

ESTIMATE OF WORK EFFORT AND COST - PRIME CONSULTANT

Name of Project: SR 421 Dunlawton Avenue Turn Lanes Various Locations
 County: Volusia
 FPN: 449770-2-62-01
 FAP No.:

Consultant Name: Dewberry
 Consultant No.:
 Date: 8/20/2026
 Estimator: Alex Bitter

Staff Classification	Total Staff Hours From "SH Summary - Firm"	Project Manager 3	Eng 2	Eng Intern	Sr Eng Tech	Chief Scientist	Scientist	Env Specialist	Sr Eng 1				SH By Activity	Salary Cost By Activity	Average Rate Per Task
3. Project General Tasks	10	6	3	3	0	0	0	0	0	0	0	0	12	\$2,397.09	\$199.76
4. Roadway	11	1	3	5	2	1	1	0	0	0	0	0	13	\$1,829.76	\$140.75
5. Utilities	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
6. Structures	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
7. Signing and Marking	2	0	1	1	0	0	0	0	0	0	0	0	2	\$284.75	\$142.38
8. Signalization	2	0	1	1	0	0	0	0	0	0	0	0	2	\$284.75	\$142.38
9. Lighting	1	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
10.	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	#DIV/0!
Total Staff Hours	26	7	8	10	2	1	1	0	0	0	0	0	29		
Total Staff Cost		\$1,799.98	\$1,286.24	\$1,239.70	\$245.68	\$151.40	\$73.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$4,796.35	\$165.39

Check = \$4,796.35

Form Revised 04/04/06

Notes:

1. This sheet to be used by Prime Consultant to calculate the Grand Total fee.
2. Manually enter fee from each subconsultant. Unused subconsultant rows may be hidden.

SALARY RELATED COSTS:		\$4,796.35
OVERHEAD:	0.00%	\$0.00
OPERATING MARGIN:	0.0%	\$0.00
FCCM (Facilities Capital Cost Mor	0.000%	\$0.00
EXPENSES:	0.00%	\$0.00

SUBTOTAL ESTIMATED FEE:	\$4,796.35
Subconsultant: Sub 1	\$0.00
Subconsultant: Sub 2	\$0.00
Subconsultant: Sub 3	\$0.00
Subconsultant: Sub 12	\$0.00
SUBTOTAL ESTIMATED FEE:	\$4,796.35
Field Survey	\$0.00
SUBTOTAL ESTIMATED FEE:	\$4,796.35
Optional Services	\$0.00
GRAND TOTAL ESTIMATED FEE:	\$4,796.35

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EXHIBIT “C”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), City of Port Orange ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Dunlawton Avenue Turn Lanes – Various Locations

Project #: 449770-2-62-02

County: Volusia

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.
7. The Escrow Agent agrees to provide written confirmation of receipt of funds to

FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.

8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028
Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B8) Resolution No. 26-42 - Approval of Grant Agreement (No. VOCA-C-2026-Port Orange Police Department-00109) from the Victims of Crime Act Grant Program to Assist Victims of Crime

DEPARTMENT: Police Services

RECOMMENDED MOTION: Move to approve Resolution No. 26-42.

SUMMARY: Police Department Staff received notice of award in the amount of \$74,479.00 from the Victims of Crime Act (VOCA) Grant Program. The 2026-2027 funding cycle will continue to assist victims of crime. The Grant Fund FY 2026-2027 Adopted Budget will be amended to reflect the \$74,479.00 from VOCA. There is no required match.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 26-42	Resolution No. 26-42 .pdf
2.	VOCA_Contract_2026	VOCA_Contract_2026 .pdf
3.	2026-2027 Match Waiver	2026-2027 Match Waiver.pdf
4.	Award Letter	Award Letter.pdf
5.	Instructions for 26-27 Contracts	Instructions for 26-27 Contracts.pdf

Nikki Smith
Manuel Marino
Sue Wang
Matthew Jones
Wayne Clark

Created/Initiated - 08/24/2026
Approved - 08/25/2026
Approved - 08/26/2026
Approved - 09/02/2026
Final Approval - 09/04/2026

RESOLUTION NO. 26-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; RATIFYING THE APPLICATION FOR AND APPROVING THE ACCEPTANCE OF GRANT FUNDS FROM THE STATE OF FLORIDA IN THE AMOUNT OF \$74,479.00 FOR THE VICTIMS OF CRIME ACT (VOCA) GRANT PROGRAM; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AGREEMENTS OR CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange has been awarded \$74,479.00 from the State of Florida Department of Legal Affairs Office of the Attorney General for the Port Orange Police Department to assist victims of crime; and

WHEREAS, the Office of the Attorney general for the State of Florida has waived the match requirements for this grant award; and

WHEREAS, the City of Port Orange desires to ratify the application for and accept the grant in the amount of \$74,479.00.

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 does hereby ratify the application for and authorize acceptance of the grant funds from the State of Florida award of the Victims of Crime Act grant in the amount of \$74,479.00.

Section 2. The Mayor and City Clerk are hereby authorized to execute all documents between the City of Port Orange and the State of Florida necessary to implement this Resolution.

Section 3. Matching funds have been waived for this grant award.

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

FY 2026/2027
(Grant Period October 1, 2026, through September 30, 2027)

AGREEMENT BETWEEN THE STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL

AND

Port Orange Police Department

GRANT NO: VOCA-C-2026-Port Orange Police Department-00109

THIS AGREEMENT is entered into in the City of Tallahassee, Leon County, Florida by and between the State of Florida, Department of Legal Affairs, Office of the Attorney General (OAG), the pass-through agency for the Victims of Crime Act (VOCA), Catalog of Federal Domestic Assistance (CFDA) Number - 16.575, hereafter referred to as “the OAG,” an agency of the State of Florida, with headquarters located at PL-01, The Capitol, Tallahassee, Florida 32399-1050, and the Port Orange Police Department, hereafter referred to as “the Provider,” and jointly referred to as “the Parties.” The parties agree as follows:

ARTICLE 1. ENGAGEMENT OF THE PROVIDER

The OAG engages the Provider to perform services as specified in this Agreement. All services are to be performed solely by the Provider and may not be subcontracted or assigned without prior written consent of the OAG. The consent of the OAG does not vest any rights in the subcontractor or create any obligation on behalf of the OAG to the subcontractor. All subcontract agreements will contain a disclosure to this effect.

This Agreement will be performed in accordance with the rules implementing the provisions of VOCA, 34 U.S.C. § 20103, Crime Victim Assistance, 28 C.F.R. §§ 94.101 through 94.122, the federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq., and the U.S. Department of Justice, (DOJ), Office of Justice Programs, DOJ Grants Financial Guide, (Financial Guide), and any other regulations or guidelines currently or subsequently required by the U.S. Department of Justice and State or Federal laws.

ARTICLE 2. SCOPE OF WORK

For the 2026/2027 Grant Period, the Provider will maintain a victim services program that will be available to provide direct services to victims of crime who are identified by the Provider or are presented to the Provider, as specified in the Provider’s 2026/2027 Grant Application as approved by the OAG and incorporated herein by reference.

ARTICLE 3. TIME OF PERFORMANCE

This Agreement will become effective on October 1, 2026, or on the date when this Agreement has been signed by all parties, whichever is later, and will end on September 30, 2027. No costs incurred by the Provider prior to the effective date or after the termination date of this Agreement will be reimbursed and the Provider is solely responsible for any such expenses.

ARTICLE 4. GRANT FUNDS

The Provider will not commingle grant funds (payments and reimbursements made under this Agreement)

with other personal or business accounts. The DOJ Financial Guide does not require physical segregation of cash deposits or the establishment of any eligibility requirements for funds which are provided to a Provider. The Provider's accounting systems must ensure grant funds are not commingled with funds on either a program-by-program or a project-by-project basis. Grant funds specifically budgeted and received for one project may not be used to support another. When the Provider's existing accounting system cannot comply with this requirement, the Provider will establish an additional accounting system to provide adequate grant fund accountability for each project.

In accordance with the provisions of section 287.0582, Florida Statutes, if the terms of this Agreement and reimbursement contemplated by this Agreement extend beyond the current fiscal year, the OAG's performance and obligation to reimburse under this Agreement are contingent upon an annual appropriation and spending authority by the Florida Legislature. In addition, the OAG's performance and obligation to reimburse under this Agreement is contingent upon the OAG's VOCA award, as funded through the DOJ, Office for Victims of Crime formula grant program.

ARTICLE 5. FINANCIAL CONSEQUENCES

In accordance with section 215.971, Florida Statutes, provisions specifying the financial consequences that apply if the Provider fails to perform the minimum level of service required by this Agreement are set forth in this paragraph. The Provider will be held responsible for maintaining a victim services program that will be available to provide direct services to victims of crime who are identified by the Provider or are presented to the Provider, and meeting the deliverables and the performance standards as outlined in the current year VOCA Grant Application and approved by the OAG, included within the OAG E-Grants Management System, and incorporated herein by reference in the approved application, unless otherwise modified as approved by the OAG in writing. If the Provider does not maintain a victim services program that will be available to provide direct services to victims of crime as outlined in the approved application without an approved justification, the OAG may impose a corrective action plan and will reduce the final payment for the grant period under this Agreement by five percent of the total award amount listed in Article 11. Additionally, failure of Provider to comply with all provisions of this agreement, including but not limited to compliance with audits, maintenance of documentation, monitoring, and report submissions will result in the withholding of payments until such issues are resolved as determined by the OAG. The provisions in this Article do not limit the OAG's rights under the law with regard to breach of this agreement or specified termination provisions.

ARTICLE 6. REGISTRATION REQUIREMENTS

Prior to execution of this Agreement, the Provider will be registered electronically with the State of Florida at MyFloridaMarketPlace.com. Failure of the Provider to register electronically with the state of Florida will result in non-payment for expenditures by the Department of Financial Services until the Provider has complied. The online registration can be completed at: <https://vendor.myfloridamarketplace.com>. If the Provider needs assistance in registering, the Provider may call 1-866-352-3776, fax 866-552-2992, or email: vendorhelp@myflorida.com. Failure of the Provider to timely register may result in cancellation of this Agreement.

The Provider will comply with the applicable requirements regarding registration with the System for Award Management (SAM) (or with a successor government-wide system officially designated by the Federal Office of Management and Budget and the DOJ's Office of Justice Programs), and to acquire and provide a Unique Entity Identifier (UEI). The Provider will comply with applicable restrictions on subcontractors that do not acquire and provide a UEI number. The details of Provider obligations are posted on the Office of Justice Programs' website at <https://www.ojp.gov/funding> (Award condition: Registration with the System for Award Management and Universal Identifier Requirements) and are incorporated by reference. This special condition does not apply to the Provider who is an individual and received the grant award as a natural person (i.e.,

unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

ARTICLE 7. W-9 REQUIREMENT

The State of Florida Department of Financial Services requires that vendors have a verified Substitute Form W-9 on file to avoid delays in payments. Information on how to register and complete your Substitute Form W-9 can be found at <http://flvendor.myfloridacfo.com>. The Vendor Management Section can also be reached at (850) 413-5519.

ARTICLE 8. E-GRANTS SYSTEM REQUIREMENT

The Provider's administrator has the authority to grant access to the E-Grants system to the Provider's employees. The Provider will immediately remove access to the E-Grants system when an employee is no longer employed at the Provider's agency or when an employee's access is no longer necessary to perform their job duties at the Provider's agency. The Provider will perform quarterly checks to ensure that only authorized employees have access to the E-Grants system and will report quarterly to the OAG their compliance with this provision.

ARTICLE 9. AUTHORIZED EXPENDITURES

Only expenditures which are detailed in the approved budget of the grant application, a revised budget, or an amended budget approved by the OAG are eligible for reimbursement with grant funds. Any requested modification to the budget must be submitted by the Provider in writing to the OAG and will require prior approval by the OAG. Budget modification approval is at the sole discretion of the OAG. Any grant funds reimbursed under this Agreement must be used in accordance with the rules implementing the provisions of VOCA, 34 U.S.C. § 20103, Crime Victim Assistance, 28 C.F.R. §§94.101 through 94.122, the federal government-wide grant rules as set forth in the 2 C.F.R. § 200, and the DOJ, Office of Justice Programs, DOJ Financial Guide, and any other regulations or guidelines currently or subsequently required by the DOJ and state or federal laws. Expenditures for the acquisition of equipment will only be considered for VOCA grant funded positions that are approved at 100% in the budget.

Grant funds cannot be used as a revenue generating source and crime victims cannot be charged either directly or indirectly for services reimbursed with grant funds. Third party payers such as insurance companies, victim compensation, Medicare or Medicaid may not be billed for services provided by grant funded personnel to clients. Grant funds must be used to provide services to all crime victims, regardless of their financial resources or availability of insurance or third-party reimbursements.

Travel expenses will be reimbursed with grant funds only in accordance with section 112.061, Florida Statutes.

Expenditures of state financial assistance must be in compliance with all laws, rules and regulations applicable to expenditures of state funds, including, but not limited to, the Florida Reference Guide for State Expenditures.

Only allowable costs resulting from obligations incurred during the term of this Agreement are eligible for reimbursement, and any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the OAG. Any funds paid in excess of the amount to which the Provider is entitled under the terms of this Agreement must be refunded to the OAG.

The Provider will reimburse the OAG for all unauthorized expenditures and the Provider will not use grant funds for any expenditures made by the Provider prior to the execution of this Agreement or after the termination date of this Agreement. If the Provider is a unit of local or state government, the Provider must follow the written purchasing procedures of that governmental agency or unit. If the Provider is a non-profit organization, the Provider will obtain a minimum of three written quotes for all single item grant-related purchases equal to or in excess of \$2,500 unless it is documented that the vendor is a sole source supplier. The Provider will use the lowest quote for the purchase.

The Provider will not use any federal funds (including grant funds), either directly or indirectly, in support of any contract or subaward to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of the U.S. Department of Justice, Office of Justice Programs.

The Provider must report suspected fraud, waste and abuse to the OAG's Office of the Inspector General at 850-414-3300.

ARTICLE 10. PROGRAM INCOME

The Provider will provide services to crime victims, at no charge, through the VOCA grant funded project. Upon request, the Provider will provide the OAG with financial records and internal documentation regarding the collection and disposition of program income, including, but not limited to, Victim Compensation, insurance, Medicare, Medicaid, restitution and direct client fees.

ARTICLE 11. AMOUNT OF FUNDS

A. Total Funds: The OAG will reimburse the Provider for contractual services or availability to provide services for the entire time of performance, as set forth in Article 3 of this Agreement, and completed in accordance with the terms and conditions of this Agreement. The total sum of monies available for reimbursement to the Provider for services provided will not exceed \$74,479.00.

B. "Availability to Provide Services" is defined as maintaining sufficient capacity to assist victims during the Provider's business hours throughout the Agreement term. Provider's business hours should be set during standard business work hours, which are between 8:00 a.m. to 6:00 p.m. Monday through Friday, unless otherwise approved as alternative standard business work hours by the OAG. Employee leave earned under this grant period is reimbursable; however, the Provider must continue to maintain sufficient capacity to assist victims.

C. "Contractual Services" are defined as those specified services established within the OAG approved budget for which the Provider is to be paid upon completion at the set rate also established within the OAG approved budget, as authorized expenditures eligible for payment, or reimbursement pursuant to ARTICLE 9, AUTHORIZED EXPENDITURES, of this Agreement.

D. The OAG strongly encourages the Provider to secure funding from other sources if the Provider anticipates the program will continue beyond the current grant year.

ARTICLE 12. METHOD OF PAYMENT

A. Payment: Payment for services performed under this Agreement will be issued in accordance with the provisions of section 215.422, Florida Statutes. The OAG will have 20 days from the receipt of any invoice for the approval and inspection of goods or services.

B. Performance Reports: All required performance reports must be completed by the Provider and received by the OAG to document the provision of the project deliverables. Processing of reimbursement of a monthly invoice is contingent upon timely OAG receipt of performance reports, subject to approval by the OAG of the level of service provided during the invoiced period, and approval by the OAG of all required performance reports. The Provider will provide all performance reports on a quarterly and annual basis unless otherwise requested by the OAG. The quarterly reports for quarters ending December, March, and June must be submitted by the Provider to the OAG by the 15th day of the month immediately following the end of the quarter. The final performance report is due to the OAG no later than the last day of the month immediately following the cancellation, expiration, or termination of this Agreement.

C. Monthly Invoices: Except for the monthly invoices for December, March, and June, each monthly invoice and all required supporting documentation, including a Certificate of Availability, must be submitted by the Provider to the OAG by the last day of the month immediately following the month for which reimbursement is requested, unless otherwise approved by the OAG in writing. The monthly invoices for December, March, and June and all required supporting documentation, including a Certificate of Availability, must be submitted by the Provider to the OAG by the 15th day of the month immediately following the month for which reimbursement is requested, unless otherwise approved by the OAG in writing. The Provider will maintain appropriate documentation of all costs for which reimbursement is sought on the invoice. The OAG may require any appropriate documentation of expenditures prior to approval of the invoice and may withhold reimbursement if services are not satisfactorily completed or if the documentation is not satisfactory. The final invoice is due to the OAG no later than the last day of the month immediately following the cancellation, expiration, or termination of this Agreement.

D. Correction of Invoices: If the Provider submits an invoice that does not accurately reflect the costs associated for that month, the correct costs must be submitted on the next monthly invoice or forfeit reimbursement from the grant for those particular costs. The OAG will not accept any corrected invoices that are not received within this timeframe. If complete and correctly documented invoices are not received within these timeframes, all right to reimbursement may be forfeited, the OAG may not honor any subsequent requests for payment. Any reimbursement due or any approval necessary under the terms of this Agreement will be withheld until all evaluation, financial and program reports due from the Provider, and necessary adjustments thereto, have been approved by the OAG.

E. Notice of Investigation: The Provider is required to inform the OAG if they are being investigated by any governmental agency for financial, programmatic, or other issues. If it comes to the attention of the OAG that the Provider is being investigated, all pending requests for reimbursement may not be processed until the matter is resolved to the satisfaction of the OAG.

F. Maintenance and Submission of Reports: The Provider will maintain and timely submit such progress, fiscal, inventory, and other reports as the OAG may require pertaining to this grant.

G. Matching Grant Award: The Provider is required to match the grant award as required in the rules implementing the Federal Victims of Crime Act. Match contributions equal to 20 percent (cash or in-kind) of the total cost of each VOCA project (VOCA grant funds plus match contributions) must be reported monthly to the OAG. All funds designated as match contributions are restricted in the same manner and to be expended for the same uses as the VOCA victim assistance grant funds and must be expended within the grant period. Unless otherwise approved by the OAG, match contributions must be reported on a monthly basis in an amount consistent with the amount of funding requested for reimbursement.

ARTICLE 13. VENDOR OMBUDSMAN

Pursuant to section 215.422(7), Florida Statutes, the Florida Department of Financial Services has

established a Vendor Ombudsman, whose duties and responsibilities are to act as an advocate for vendors who may have problems obtaining timely payments from state agencies. The Vendor Ombudsman may be reached at (850) 413-5516.

ARTICLE 14. LIABILITY AND ACCOUNTABILITY

The Provider, if a non-profit entity, will provide continuous and adequate director, officer, and employee liability insurance coverage against any personal liability or accountability by reason of actions taken while acting within the scope of their authority during the existence of this Agreement and any renewal and extension thereof. Such coverage may be provided by a self-insurance program established and operating under the laws of the state of Florida.

ARTICLE 15. INDEPENDENT CONTRACTOR

The Provider is an independent contractor and not an officer, employee, agent, servant, joint venture, or partner of the state of Florida, except where the Provider is a state Agency. Neither the Provider nor its agents, employees, subcontractors, or assignees will represent to others that the Provider has the authority to bind the OAG. This Agreement does not create any right to any state retirement, leave or other benefits applicable to state of Florida personnel as a result of the Provider performing its duties or obligations under this Agreement. The Provider will take such actions as may be necessary to ensure that each subcontractor of the Provider will be deemed an independent contractor and will not be considered or permitted to be an officer, employee, agent, servant, joint venturer, or partner of the State of Florida. The OAG will not furnish support services (e.g., office space, office supplies, telephone service, and administrative support) to the Provider, or its subcontractor or assignee, unless specifically agreed to in writing by the OAG.

All deductions for social security, withholding taxes, income taxes, contributions to unemployment compensation funds and all necessary insurance for the Provider, the Provider's officers, employees, agents, subcontractors, or assignees will be the sole responsibility of the Provider.

ARTICLE 16. DOCUMENTATION, RECORD RETENTION

The Provider will maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of grant funds.

The Provider will maintain a file for inspection by the OAG or its designee, Chief Financial Officer, Auditor General, or the DOJ that contains written invoices for all fees, or other compensation for services and expenses, in detail sufficient for a proper pre-audit and post-audit. This includes the nature of the services performed or expenses incurred, the identity of any persons who performed the services or incurred the expenses, the daily time and attendance records and the amount of time expended in performing the services (including the day on which the services were performed), and if expenses were incurred, a detailed itemization of such expenses. All documentation, including audit working papers, will be maintained by the Provider for a period of five years from the termination date of this Agreement, or until any audit has been completed and any findings have been resolved, whichever is later.

The Provider will give authorized representatives of the OAG the right to access, receive and examine all records, books, papers, case files, documents, goods, and services related to the grant funds. The Provider, by signing this Agreement specifically authorizes the OAG to receive and review any record reasonably related to the purpose of the grant as authorized in the original approved grant application and or the amendments thereto. Failure to provide documentation as requested by the OAG under the provisions of this Agreement will result in

either the termination of the agreement or suspension of further reimbursements to the Provider until all requested documentation has been received, reviewed, and the costs are approved for reimbursement by the OAG.

ARTICLE 17. PUBLIC RECORDS

The Provider will comply with Chapter 119, Florida Statutes, Florida's public record law. The Provider will keep and maintain public records required by the OAG to perform all services required under this Agreement. A request to inspect or copy public records relating to this Agreement must be made directly to the OAG. If the OAG does not possess the requested records, the OAG will immediately notify the Provider of the request. Upon request by the OAG to inspect or copy public records relating to this Agreement, the Provider will provide the OAG with a copy of the requested records at no cost to the OAG or allow the records to be inspected or copied by the member of the public making the records request at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Provider must ensure that in allowing public access to all documents, papers, letters, or other materials made or received in conjunction with this Agreement, those records that are exempt or confidential and exempt from public records disclosure requirements of Chapter 119, Florida Statutes, or other provisions of Florida law, are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Provider does not transfer the records to the OAG.

If the Provider fails to provide the public records to the OAG within a reasonable time, it may be subject to penalties under section 119.10, Florida Statutes, as well as unilateral cancellation of this Agreement by the OAG. In the event the Provider's business closes or the Provider is permanently unable to perform under this Agreement, the Provider will electronically transfer, at no cost, all public records to the OAG upon becoming aware of any impending closure or event that renders the Provider unable to perform said services. Upon completion of this Agreement, the Provider will keep and maintain public records required by the OAG to perform the services to be provided in the scope of this Agreement, or electronically transfer in a file format compatible with the information technology systems of the OAG, at no cost to the OAG, all public records in possession of the Provider. If the Provider transfers all public records to the OAG upon completion or termination of the Agreement, the Provider will destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the Agreement, it must meet all applicable requirements for retaining public records, consistent with the State of Florida's records retention schedule. All public records stored electronically must be provided to the OAG, upon request of its Custodian of Public Records, at no cost to the OAG, in a format compatible with the information technology systems of the OAG. The OAG may unilaterally terminate this Agreement if the Provider refuses to allow access to all public records made or maintained by the Provider in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Art. I, Florida State Constitution, and sections 119.07(1) or 960.15, Florida Statutes.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-414-3634, PublicRecordsRequest@myfloridalegal.com, OFFICE OF THE ATTORNEY GENERAL, PL-01, THE CAPITOL, TALLAHASSEE, FL 32399-1050.

ARTICLE 18. PROPERTY

The Provider will be responsible for the proper care and custody of all property purchased with grant funds and agrees not to sell, transfer, encumber, or otherwise dispose of property acquired with grant funds without the

written permission of the OAG. If the Provider is no longer a grant funds recipient, all property acquired by grant funds will be subject to the provisions of the DOJ Financial Guide.

ARTICLE 19. AUDITS; COMPLIANCE WITH THE INSPECTOR GENERAL

A. Pursuant to section 20.055, Florida Statutes, the Provider, and any subcontractor to the Provider understand and will comply with their duty to cooperate with the Inspector General in any investigations, audit inspection or review.

B. The administration of funds disbursed by the OAG to the Provider may be subject to audits and monitoring by the OAG, as described in this section.

C. Title 2 C.F.R. Part 2, Subpart A, is applicable if the Provider is a non-federal entity, meaning a state, local government, Indian tribe, institution of higher learning, or nonprofit organization that carries out a federal award as a recipient or subrecipient, as defined in that Part.

1. In the event the Provider expends one million dollars or more during the non-federal entity's fiscal year in federal awards, it must have a single or program-specific audit conducted for that year in accordance with the provisions of federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq. Article 11 to this Agreement indicates the amount of federal funds disbursed through the OAG by this Agreement. In determining the federal awards expended in its fiscal year, the Provider will consider all sources of federal awards, including federal resources received from the OAG. The determination of amounts of federal awards expended should be in accordance with the guidelines established by federal government-wide grant rules as set forth in 2 C.F.R. § 200. An audit of the Provider conducted by the Auditor General in accordance with 2 C.F.R. § 200.500, will meet the requirements of this part.

2. In connection with the audit requirements addressed in this part, the Provider will fulfill the requirements relating to auditee responsibilities as provided in 2 C.F.R. § 200.508.

3. In the event the Provider expends less than one million dollars in federal awards in its fiscal year and elects to have an audit conducted in accordance with 2 C.F.R. § 200.500, the cost of the audit must be reimbursed from non-federal funds (i.e., the cost of such an audit must be reimbursed from Provider resources obtained from other than federal entities), as mandated in 2 C.F.R. § 200.400.

ARTICLE 20. AUDIT REPORT SUBMISSION

Copies of audit reports conducted pursuant to Florida Statute 215.97 and the Florida Rules of the Auditor General Chapter 10.650, must be submitted to the Federal Audit Clearinghouse within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier) in accordance with 2 C.F.R. § 200.512.

A. Copies of audit reports for audits conducted in accordance with the 2 C.F.R. § 200.500, and required by this Agreement will be submitted, when required by 2 C.F.R. § 200.512, by or on behalf of the Provider directly to the following:

Office of the Attorney General
Bureau of Advocacy and Grants Management
PL-01, The Capitol
Tallahassee, Florida 32399-1050

B. Any reports, management letters, or other information required to be submitted to the OAG pursuant to

this Agreement will be submitted timely in accordance with federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq., as applicable.

- C. Providers should indicate the date the financial reporting package was delivered in correspondence accompanying the financial reporting package.

ARTICLE 21. MONITORING

In addition to reviews of audits conducted in accordance with 2 C.F.R. § 200.500, the Provider will comply and cooperate with any monitoring procedures and processes and additional audits deemed appropriate by the OAG, including but not limited to on-site visits. The Provider will also comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the OAG or its designee, Chief Financial Officer, Auditor General or the U.S. Department of Justice.

The Provider may not accept duplicate funding for any cost, position, service or deliverable funded by the OAG. Duplicative funding is defined as more than 100 percent payment from all funding sources for any cost, position, service or deliverable. If there are multiple funding sources and a program is funded by the OAG, the OAG or its designee has the right to review all documents related to those funding sources to determine whether duplicative funding is an issue. If duplicate funding is found, this Agreement may be suspended, terminated or both while the extent of the overpayment is determined. Failure to comply with state or federal law, and the U.S. Department of Justice Programs, Financial Guide, may also result in the suspension, termination, or both of this Agreement while the extent of the overpayment is determined. Absent fraud, in the event that there has been an overpayment to the Provider for any reason, if the amount of the overpayment cannot be determined to a reasonable degree of certainty, as determined in the sole discretion of the OAG, the Provider will reimburse to the OAG one half of the monies previously paid to the Provider for that line item for the grant year in question.

ARTICLE 22. RETURN OF FUNDS

The Provider will return to the OAG any overpayments made to the Provider for unearned income or disallowed items pursuant to the terms and conditions of this Agreement. In the event the Provider or any outside accountant or auditor determines that an overpayment has been made, the Provider will immediately return to the OAG such overpayment without prior notification from the OAG. In the event the OAG discovers that an overpayment has been made, the contract manager, on behalf of the OAG, will notify the Provider and the Provider will forthwith return the funds to the OAG. Should the Provider fail to immediately reimburse the OAG for any overpayment, the Provider will be charged interest at the rate in effect on the date of the overpayment, as determined by the State of Florida, Chief Financial Officer, pursuant to Chapter 55, Florida Statutes, on the amount of the overpayment or outstanding balance thereof. Interest will accrue from the date of the Provider's initial receipt of funds up to the date of reimbursement of said overpayment funds to the OAG.

ARTICLE 23. GRATUITIES

The Provider will not offer or give any gift or any form of compensation to any OAG employee. As part of the consideration for this Agreement, the parties intend that this provision will survive this Agreement for a period of two years. In addition to any other remedies available to the OAG, any violation of this provision will result in referral of the Provider's name and description of the violation of this term to the Department of Management Services for the potential inclusion of the Provider's name on the suspended vendors list for an appropriate period. The Provider will ensure that its subcontractors, if any, comply with these provisions.

ARTICLE 24. PATENTS, COPYRIGHTS, AND ROYALTIES

The Provider agrees that if any discovery or invention arises or is developed in the course of or as a result

of work or services performed under this Agreement, or in any way connected herewith, the discovery or invention will be deemed transferred to and owned by the State of Florida. Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the state of Florida.

In the event that any books, manuals, films, or other copyrightable materials are produced, the Provider will identify all such materials to the OAG. The Provider does hereby assign to the OAG and its assigns or successors, all rights accruing under or in connection with performance under this Agreement, including the United States Copyright, all other literary rights, all rights to sell, transfer or assign the copyright, and all rights to secure copyrights anywhere in the world.

The Provider will indemnify and hold the OAG and its employees harmless from any claim or liability whatsoever, including costs and expenses, arising out of any copyrighted, patented, or unpatented invention, process, or article manufactured or used by the Provider in the performance of this Agreement. The Provider will indemnify and hold the OAG and its employees harmless from any claim against the OAG for infringement of patent, trademark, copyright or trade secrets. The OAG will provide prompt written notification of any such claim. During the pendency of any claim of infringement, the Provider may, at its option and expense, procure for the OAG, the right to continue use of, or to replace or modify the article to render it non-infringing. If the Provider uses any design, device, or materials covered by letters patent, or copyright, it is mutually agreed and understood without exception the compensation paid pursuant to this Agreement includes all royalties or costs arising from the use of such design, device, or materials in any way involved in the work contemplated by this Agreement.

Subcontracts must specify that all patent rights and copyrights are reserved to the state of Florida.

ARTICLE 25. IDEMNIFICATION AND ASSUMPTION OF LIABILITY

The Provider will be liable for and indemnify, defend, and hold the OAG, and all of its officers, agents, and employees, harmless from all claims, suits, judgments, or damages, including attorney's fees and costs, arising out of any act or omission or neglect by the Provider and its agents, employees and subcontractors during the performance or operation of this Agreement or any subsequent modifications or extensions thereof. The Provider's evaluation or inability to evaluate its liability will not excuse the Provider's duty to defend and to indemnify the OAG within seven days after notice by the OAG. The Provider will pay all costs and fees including attorney's fees related to these obligations and their enforcement by the OAG. The OAG's failure to notify the Provider of a claim will not release the Provider from these duties. The Provider will not be liable for any claims, suits, judgments, or damages arising solely from the negligent acts of the OAG. The Provider will assume all liability associated with providing services under the terms and conditions of this Agreement. This includes, but is not limited to, premises liability and any travel taken by any employee of Provider or any recipient of Provider's services.

NOTE: The indemnification provisions of this Article are not applicable to entities identified in section 768.28(2), Florida Statutes, and do not constitute a waiver of sovereign immunity, or increase the limited waiver of sovereign immunity specified in section 768.28, Florida Statutes.

ARTICLE 26. TERMINATION

A. Termination at Will: This Agreement may be terminated by the OAG for any reason upon five days written notice via certified U.S. mail, hand delivery, or email to the Provider to the physical or email address provided by the Provider in the application.

B. Termination for Non-Appropriation or Lack of Funds: In the event funds for payment pursuant to this Agreement become unavailable, the OAG may terminate this Agreement upon no less than 24 hours written

notice to the Provider. The notice will be sent by a method of email, or by hand delivery with proof of delivery, to the representative of the Provider responsible for administration of the program. The OAG will be the final authority as to the availability and adequacy of funds.

C. Upon Termination: In the event this Agreement is terminated by the OAG, the Provider will deliver documentation of ownership or title, if appropriate for all supplies, equipment and personal property purchased with grant funds to the OAG, within 30 days after termination of this Agreement. Any finished or unfinished documents, data, correspondence, reports and other products prepared by or for the Provider under this Agreement will be made available to and for the exclusive use of the OAG.

D. Notwithstanding the above, the Provider will not be relieved of liability to the OAG for damages sustained by the OAG by any termination by the OAG of this Agreement by the Provider. In the event this Agreement is terminated by the OAG, the Provider will be reimbursed for satisfactorily performed and documented services provided prior to the effective date of termination.

ARTICLE 27. AMENDMENTS

Modification of any provision of this Agreement must be mutually agreed upon by all parties and requires a written and fully executed amendment to this Agreement, except as provided for budget modifications submitted by the Provider in writing which have been previously approved by the OAG pursuant to the terms of ARTICLE 9, AUTHORIZED EXPENDITURES.

ARTICLE 28. NONDISCRIMINATION

The Provider may not use these funds to discriminate against, or otherwise give preferential treatment to, any person based on any classification protected by federal or state law or to engage in any activity or practice that is prohibited under Chapter 760, Florida Statutes.

Recipients of federal financial assistance must comply with applicable federal civil rights laws, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. §§ 10228(c) and 10221(a)); the Victims of Crime Act of 1984, as amended (34 U.S.C. § 20110(e)); The Juvenile Justice and Delinquency Prevention Act of 1974, as amended (34 U.S.C. § 11182(b)); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); and Exec. Order 13279 (67 Fed. Reg. 241).

Pursuant to applicable federal laws and Chapter 760, Florida Statutes, the Provider will not discriminate against any client or employee in the performance of this Agreement or against any applicant for employment because of age, race, religion, color, disability, national origin, marital status or sex. All contractors, subcontractors, sub-grantees, or others that the Provider engages to provide services or benefits to clients or employees in connection with any of its programs and activities will not discriminate against those clients or employees because of age, race, religion, color, disability, national origin, marital status or sex.

The Provider must have policies and procedures in place for responding to complaints of discrimination that employees and beneficiaries file directly with the Provider. Information provided by the U.S. Department of Justice, Office of Justice Programs, to assist with policy and procedure development is available at <https://www.ojp.gov/program/civil-rights-office/about>.

In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, marital status or

sex against the Provider, the Provider will forward a copy of the findings to the Office of Justice Programs, Office for Civil Rights (OCR), and the OAG.

The Provider must have policies and procedures in place for responding to complaints of discrimination that employees and beneficiaries file directly with the Provider. Information provided by the DOJ, Office of Justice Programs, to assist with policy and procedure development is available at <https://www.ojp.gov/program/civil-rights-office/about>.

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Safe Streets Act and Title VI of the Civil Rights Act of 1964, the Provider must take reasonable steps to ensure that LEP persons have meaningful access to its programs and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Provider is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

In accordance with federal civil rights laws, the Provider will not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

All Providers must complete a review of the Office of Justice Programs, Office for Civil Rights training modules during the 2026-2027 grant period and confirm compliance with this requirement to the OAG through self-reporting by December 31, 2026. The training modules are available at <https://www.ojp.gov/program/civil-rights/video-training-grantees/overview>. Pursuant to section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a response on a contract to provide any goods or services to a public entity; may not submit a response on a contract with a public entity for the construction or repair of a public building or public work; may not submit a response 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. The Provider will notify the OAG if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of this Agreement.

The OCR issued an advisory document for federal grant recipients on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013), available at http://ojp.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf. Recipients should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. If warranted, recipients should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans.

ARTICLE 29. NONDISCRIMINATION IN PROGRAMS INVOLVING STUDENTS

The Provider will not use award funding to discriminate against students that are participating in (or benefiting from) programs that are funded by those same federal funds. As an example, provided by the Office for Victims of Crime, Office of Justice Programs, the Provider cannot use VOCA funding to treat a Catholic student differently than a non-Catholic student when both are applying for, or receiving benefits from, the VOCA program. This same protection also applies to the students' parents or legal guardians.

ARTICLE 30. ACKNOWLEDGEMENTS

- A. All publications, advertising, or written descriptions of the sponsorship of the program will state: "This project was supported by Award No. VOCA-C-2026-Port Orange Police Department-00109 awarded by the Office for Victims of Crime, Office of Justice Programs. Sponsored by (Port Orange Police Department) and the state of Florida."
- B. The Provider is required to display a civil rights statement prominently on all publications, websites, posters, and informational materials mentioning USDOJ programs in bold print and no smaller than the general text of the document. The full civil rights statement must be used whenever possible. Single page documents that do not have space for the full civil rights statement may contain a condensed version in a print size no smaller than the text used throughout the document. If the civil rights statement is missing on a publication, the statement must be included the next time the publication is revised or reprinted and printed copies of the statement must be attached to the current supply of the publication until the next revision is reprinted.
- C. Full Civil Rights Statement: In accordance with federal law and U.S. Department of Justice policy, this organization is prohibited from discriminating on the basis of race, color, national origin, religion, sex, age, or disability. To file a complaint of discrimination, write the Florida Department of Legal Affairs, Federal Discrimination Complaint Coordinator, PL-01 The Capitol, Tallahassee, Florida, 32399-1050, or call 850 -414-3300, or write Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531 or call 202-307-0690 (Voice) or 202-307-2027 (TDD/TYY) or <https://www.ojp.gov/program/civil-rights/filing-civil-rights-complaint>. Individuals who are hearing impaired or have speech disabilities may also contact OCR through the Federal Relay Service at 800-877-8339 (TTY), 877-877-8982 (Speech), or 800-845-6136 (Spanish).
- D. Condensed Civil Rights Statement: The Port Orange Police Department is an equal opportunity provider and employer.
- E. The Provider is required to display the OAG's "Civil Rights Fact Sheet" at locations open to the public. The "Civil Rights Fact Sheet" will be made available to the Provider via the OAG E-Grants Management System.

ARTICLE 31. EMPLOYMENT

- A. The employment of unauthorized aliens by the Provider is considered a violation of Title 8 section 274A(a) of the Immigration and Nationality Act. If the Provider knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement. Any services performed by any such unauthorized aliens will not be paid.
- B. In accordance with section 448.095(2), Florida Statutes, the Provider must register with and use the U.S. Department of Homeland Security's E-Verify system: <https://www.e-verify.gov/>, to verify the work authorization status of all new employees hired to perform services specified in the Purchase Order. Subcontractors must also be registered in the E-Verify system and provide the Provider with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Provider will maintain a copy of such affidavit for the duration of the Agreement. The OAG may request documentation of compliance with this provision at any time during the Agreement term. The Agreement may be subject to termination for failure to comply with the requirements set forth in this Article, as specified in section 448.095(2) (a), Florida Statutes.

ARTICLE 32. NO THIRD-PARTY RIGHTS

This Agreement and the rights and obligations created by it are intended for the sole benefit of the OAG and the Provider. No third party to this Agreement, including the victims served by the Provider, have any rights under this Agreement. No third party may rely upon this Agreement, or the rights and representations created by it for any purpose.

ARTICLE 33. ADMINISTRATION OF AGREEMENT

- A. All approvals referenced in this Agreement must be obtained from the parties' contract administrators or their designees. All notices must be given to the parties' contract administrators respectively.
- B. The OAG's contract administrator is Christina F. Harris, Chief, Bureau of Advocacy and Grants Management.
- C. The Provider's contract administrator will be provided at the time of execution.
- D. The parties will provide each other with written notification of any change in its designated representative for this Agreement. Such changes do not require a formal written amendment to this Agreement.

ARTICLE 34. CONTROLLING LAW AND VENUE

This Agreement will be governed by the laws of the State of Florida. All litigation arising under this Agreement will be instituted in the appropriate state or federal court in Leon County, Florida.

ARTICLE 35. COMPLIANCE WITH RESPECT

PURSUANT TO SECTION 413.036(3), FLORIDA STATUTES, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

ARTICLE 36. COMPLIANCE WITH PRIDE

PURSUANT TO SECTION 946.515(2), FLORIDA STATUTES, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

ARTICLE 37. PROCUREMENT OF MATERIALS WITH RECYCLED CONTENT

Any products or materials which are the subject of or are required to carry out this Contract will be procured in accordance with the provisions of section 403.7065, Florida Statutes.

ARTICLE 38. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

As applicable, the Provider must comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement. The act prohibits the inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected violations must be reported to the OAG.

ARTICLE 39. FEDERAL LAW RIGHTS TO INVENTIONS

As applicable, Provider must comply with 37 C.F.R., part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Governmental Grants, Contracts, and Cooperative Agreements.”

ARTICLE 40. FEDERAL CLEAN AIR ACT

As applicable, and if this Agreement is over \$100,000.00, Provider must comply with all applicable standards, orders, or regulations of the Clean Air Act, as amended (42 U.S.C. chapter 85) and the Clean Water Act, as amended (33 U.S.C. chapter 26), President’s Executive Order 11738, and Environmental Protection Agency regulations codified in Title 40 of the Code of Federal Regulations. The Provider must report any violations of the above to the OAG.

ARTICLE 41. PRO-CHILDREN ACT OF 1994

As applicable, Provider must comply with the Pro-Children Act of 1994, 20 U.S.C. sections 6081-6084, which requires that smoking not be permitted in any portion of any indoor facility used for the provision of federally funded services including health, daycare, early childhood development, education or library services on a routine or regular basis, to children up to age 18. Provider’s failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and the imposition of an administrative compliance order on the responsible entity. If applicable, the Provider must also include a similar provision in any subcontracts it enters under this Agreement.

ARTICLE 42. FEDERAL SUSPENSION AND DEBARMENT LIST

As applicable, the Provider agrees to comply with 2 C.F.R. Part 180 and 2 C.F.R. Part 3000 and warrants none of the Provider’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Provider must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction (as defined by federal law) it enters into. Provider must notify the OAG immediately if it or any of the Provider’s employees, affiliates or subcontractors are included on the Federal Suspension or Debarment Lists.

ARTICLE 43. INSPECTION OF RECORDS

In accordance with section 216.1366, Florida Statutes, the OAG is authorized to inspect the: (a) financial records, papers, and documents of the Provider that are directly related to the performance of this Agreement or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Provider which the OAG determines are necessary to monitor the performance of this Agreement or to ensure that the Agreement terms are being met. The Provider must provide such records, papers, and documents requested by the OAG within 10 business days after the request is made.

ARTICLE 44. ENTIRE AGREEMENT

This Agreement and the Provider's approved 2026-2027 grant application in the E-Grants Management System, embody the entire agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained herein. This Agreement supersedes all previous communications, representations or agreements on this same subject, verbal or written, between the parties. There are no representations or statements that are relied upon by the parties that are not expressly set forth herein.

The Provider's signature below specifically acknowledges understanding of the fact that the privilege of obtaining a VOCA grant is not something this or any Provider is entitled to receive. This Agreement is for one-time funding only and will not exceed one federal fiscal year. There is absolutely no expectation or guarantee, implied or otherwise, the Provider will receive VOCA funding in the future. Each of the parties executing this Agreement have full authority to do so and have received all lawfully necessary approvals to enter into this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the OFFICE OF THE ATTORNEY GENERAL and Port Orange Police Department, have executed this Agreement.

Authorizing Official

Scott Stiltner, Mayor

Print Name

Date

OAG Authorizing Official

Print Name

Date

Authorizing Official* Attest

Robin L. Fenwick, City Clerk

Print Name

Date

Authorizing Official*

Print Name

Date

FEID# of Provider

Flair Code

* Provided for use if multiple signatures are required by your organization.

PUR 2024
Use of Coercion for Labor and Services

Pursuant to section 787.06(13), Florida Statutes, this portion of the form **must be completed by an officer or representative of the nongovernmental entity** executing, renewing, or extending a contract with a governmental entity.

Port Orange Police Department does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Entity Name: _____

Representative/Officer's Printed Name: _____

Representative/Officer's Title: _____

Signature: _____

Date: _____

Office of the Attorney General Grant Award Project Summary

 Office of the Attorney General Division of Victim Services Bureau of Advocacy and Grants Management PL-01 The Capitol Tallahassee, Florida 32399-1050	Office of the Attorney General Victims of Crime Act Grant	2026-2027
Subrecipient Name and Address Port Orange Police Department 4545 Clyde Morris Blvd Port Orange, Florida 32129-4062	OAG Grant Number VOCA-C-2026-Port Orange Police Department-00109	
Subrecipient UEI Number LV8ZD1LYF3H4	Project Period: From 10/1/2026 To 9/30/2027	
Subrecipient IRS/Vendor/FEIN Number 59-6000412	Budget Period: From 10/1/2026 To 9/30/2027	
Project Title OVC FY 22 VOCA Victim Assistance Formula OVC FY 23 VOCA Victim Assistance Formula	Award Date 10/1/2026	Award is R&D (Y/N) No
Previous Award Amount \$0.00	Amount of this Award \$74,479.00	Total Award \$74,479.00
Special Conditions The above grant project is approved to such conditions or limitations as are set forth in the Office of the Attorney General contract.		
Catalog of Domestic Federal Assistance (CFDA Number) 16.575 - Crime Victim Assistance		
Summary Description of Project This grant award provides funds from the Crime Victims Fund to enhance crime victim services in the State of Florida. Victims of Crime Act (VOCA) assistance funds are typically competitively awarded by the Office of the Attorney General to public agencies and/or local, not-for-profit organizations that provide direct services to crime victims.		
Federal Award Agency U.S. Department of Justice Office of Justice Programs Office for Victims of Crime	OVC Project Period, Award Date 2022-2023: From 10/1/2021 to 9/30/2027 2023-2024: From 10/1/2022 to 9/30/2027	
OVC Federal Award Number 2022-15POVC-22-GG-00725-ASSI Awarded 8-25-2022 2023-15POVC-23-GG-00434-ASSI Awarded 8-23-2023	OVC Total Award to OAG \$91,878,955 \$87,867,754	
OAG Staff Contact Christina Harris, Bureau Chief (850) 414-3380	Bureau Contact contact.voca@myfloridalegal.com (850) 414-3380	
Signature, OAG Authorizing Official, Date	Signature, Agency Executive Director, Date	



JAMES UTHMEIER
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Division of Victim Services
and Criminal Justice Programs

PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300
<http://www.myfloridalegal.com>

September 2026

Victims of Crime Act (VOCA) 2026-2027

The Office of the Attorney General waives the match requirement for all 2026-2027 VOCA Assistance grants funded with FFY 2022-15POVC-22-GG-00725-ASSI and FFY 2023-15POVC-23-GG-00434-ASSI. The time period for these awards is October 1, 2026, through September 30, 2027.

These considerations are being made due to the continued challenges service providers are experiencing in their ability to meet the match requirement due to financial constraints and unique circumstances.

Christina Harris

OAG Authorizing Official
Director, Division of Victim Services
and Criminal Justice Programs

Christina Harris
Print Name

09/08/2026

Date

2026-2027 Match Waiver

Final Audit Report

2026-09-08

Created:	2026-09-08
By:	Bethany Orlando (bethany.orlando@myfloridalegal.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXo0qJn0YR6rgOjUeYclTWnqIWkhPlhKT

"2026-2027 Match Waiver" History

-  Document created by Bethany Orlando (bethany.orlando@myfloridalegal.com)
2026-09-08 - 6:34:12 PM GMT- IP address: 164.51.33.5
-  Document emailed to christina.harris@myfloridalegal.com for signature
2026-09-08 - 6:34:55 PM GMT
-  Email viewed by christina.harris@myfloridalegal.com
2026-09-08 - 6:35:34 PM GMT- IP address: 104.47.64.254
-  Signer christina.harris@myfloridalegal.com entered name at signing as Christina Harris
2026-09-08 - 6:37:02 PM GMT- IP address: 164.51.33.5
-  Document e-signed by Christina Harris (christina.harris@myfloridalegal.com)
Signature Date: 2026-09-08 - 6:37:04 PM GMT - Time Source: server- IP address: 164.51.33.5 - Signature Appearance Selected: TYPE
-  Agreement completed.
2026-09-08 - 6:37:04 PM GMT



Award Letter



OFFICE OF ATTORNEY GENERAL
JAMES UTHMEIER
SAFE ★ STRONG ★ FREE

OFFICE OF THE ATTORNEY GENERAL
Division of Victim Services and Criminal Justice Programs
Bureau of Advocacy and Grants Management
PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300 | Fax (850) 487-0168
<https://www.myfloridalegal.com>

The Office of the Attorney General, Bureau of Advocacy and Grants Management, is pleased to inform you that *Port Orange Police Department* will be awarded a Victims of Crime Act (VOCA) grant for the 2026-2027 funding cycle in the amount of **\$74,479.00**.

Our staff has worked diligently to determine how best to distribute the available VOCA grant funding, while maintaining mandatory federal grant distribution guidelines and mission critical services. These considerations and your agency's commitment to providing services to crime victims in your community were the key factors used in making our decision.

Please contact the Bureau of Advocacy and Grants Management at (850) 414-3380 or Contact.Voca@myfloridalegal.com with any questions on this grant. Thank you for your continuing efforts in providing assistance to victims of crime.

Thank you,
The Division of Victim Services and Criminal Justice Programs

Instructions Regarding 2026-2027 VOCA Contracts

August 14, 2026

For the 2026-2027 grant year, Award Letters and Contracts will be issued via the EGrants IGX system.

The documents must be downloaded from the system for completion and signatures.

To download the documents:

1. In EGrants IGX, navigate to and open the agency's 2026-2027 VOCA Condensed Application.
2. Scroll down on the menu to the left to the "Contract" section and select the link for *Award Letter*.
 - You may review and/or download the letter for the agency's records. Download using the "Print" option to open and save the form.
 - It is not necessary to sign or return the Award Letter to the OAG.
3. In the menu to the left, select the link for Contract Versions.
 - On the following screen, select the link for "Standard Contract" to download the contract documents.

Your agency may download the documents, and sign and return the Contract, using 1 of the 2 methods below.

Method 1: Physical ink signatures

1. After downloading and printing the contract documents, the following forms must be completed and/or signed. In order for the contract to continue in the award process, **ALL** documents *must be completed and/or signed*.
 - a. 2026-2027 VOCA Contract
 - b. Grant Award Project Summary
 - c. Use of Coercion for Labor and Services
2. Ensure that all applicable signatures and dates are applied, or the contract will **not** be processed by the OAG.
3. After completing and/or signing the above forms, the physical, original copy of the contract documents with *ink signatures* must be mailed to the OAG (address provided below).

Method 2: Electronic Signatures

1. After downloading the contract documents, they may be uploaded to either **Adobe Sign** or **DocuSign** for electronic signatures (other electronic programs will not be accepted). In order for the contract to continue in the award process, **ALL** documents *must be completed and/or signed*.
2. The following forms must be completed and/or signed.
 - a. 2026-2027 VOCA Contract
 - b. Grant Award Project Summary
 - c. Use of Coercion for Labor and Services
3. Ensure that all applicable signatures and dates are applied, or the contract will **not** be processed by the OAG.
4. After completing and/or signing the above forms, the electronically signed contract documents, along with the *electronic signature verification form*, must be emailed to contact.voca@myfloridalegal.com

Note: *Electronic signatures must be applied through Adobe Sign or DocuSign ONLY. Typing the name or any other form of signature will **not** be accepted.*

Forward all questions to contact.voca@myfloridalegal.com

Address:

Office of Attorney General James Uthmeier
Bureau of Advocacy & Grants Management
PL 01, The Capitol
Tallahassee, FL 32399-1050



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B9) Resolution No. 26-43 - Approval of Grant Agreement (No. L0527) with the Florida Department of Environmental Protection for the Charles Street Wastewater Lift Station Rehabilitation Project

DEPARTMENT: Engineering

RECOMMENDED MOTION: Move to approve Resolution No. 26-43.

SUMMARY: In July 2026, the City received the draft grant agreement from the Florida Department of Environmental Protection (FDEP) for the legislative appropriations grant in the amount of \$750,000 for the Charles Street Wastewater Lift Station Rehabilitation Project.

The Charles Street lift station was constructed in the late 1970s and is a critical component of the City's wastewater collection system, providing service to more than 300 residential properties and Sugar Mill Elementary School. This project aims to improve the resiliency and reliability of the wastewater system.

The scope of work includes: elevating the existing wet well and electrical components above the applicable floodplain elevation and replacing and upsizing the existing force main to increase system capacity to improve reliability.



Charles Street Lift Station Upgrades



PRESENTER: Junos Reed

ATTACHMENTS:

1.	Resolution No. 26-43	Resolution No. 26-43.pdf
2.	L0527 - Agreement	L0527 - Agreement .pdf

Nikki Smith	Created/Initiated - 08/24/2026
Richard Colby	Approved - 08/25/2026
Junos Reed	Approved - 08/27/2026
Sue Wang	Approved - 08/28/2026
Matthew Jones	Approved - 09/02/2026
Wayne Clark	Final Approval - 09/04/2026

RESOLUTION NO. 26-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ACCEPTING A \$750,000 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 L0527) FOR THE PURPOSE OF THE CHARLES STREET WASTEWATER LIFT STATION REHABILITATION PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST ALL NECESSARY DOCUMENTS FOR SAID GRANT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has been awarded a \$750,000.00 grant from the State of Florida Department of Environmental Protection as part of the Fiscal Year 2026-2027 State of Florida legislative appropriations; and

WHEREAS, in order to receive said grant, the City must approve and enter into a standard grant agreement 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.

Section 2. The City Council of the City of Port Orange, Florida, hereby approves and accepts the State of Florida Department of Environmental Protection Grant in the amount of \$750,000.00 and enter into a grant agreement with the State of Florida Department of Environmental Protection for the Charles Street Wastewater Lift Station Rehabilitation Project.

Section 3. The Mayor and City Clerk are 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 Charles Street Wastewater Lift Station Rehabilitation L0527

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: **July 1, 2026** Date of Expiration: **January 31, 2030**

4. Project Number: Project Location(s): **Lat/Long: (29.1462, -80.9986)**
(If different from Agreement Number)

Project Description: **The Grantee will make improvements to the Charles Street Wastewater Lift Station. Improvements include elevating the existing wet well and electrical components above the applicable floodplain elevation and upsizing the existing force main.**

5. Total Amount of Funding: \$ 750,000.00	Funding Source?	Award #s or Line-Item Appropriations:	Amount per Source(s):
	☒ State ☐ Federal	LP, GAA LI 1766A, FY 26-27, WPSPTF	\$ 750,000.00
	☐ State ☐ Federal		\$
	☐ State ☐ Federal		\$
	☐ Grantee Match		\$
Total Amount of Funding + Grantee Match, if any:			\$ 750,000.00

6. Department's Grant Manager Name: Mitch Holmes or successor Address: Florida Dept. of Environmental Protection 3900 Commonwealth Blvd., MS 3602 Tallahassee, FL 32399-3000 Phone: 850-245-2963 Email: Mitch.Holmes@FloridaDEP.gov	Grantee's Grant Manager Name: Nikki Smith or successor Address: 1000 City Center Circle Port Orange, FL 32129 Phone: 386-506-5714 Email: NSmith@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): Exhibit J: OSTDS/EHD Grants Data Collection Tool	
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

Scott Stiltner, Mayor

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

Mitch Holmes, DEP Grant Manager

Kyleigh Revis, DEP QC Reviewer

CITY OF PORT ORANGE ADDITIONAL SIGNATURES

Attest: _____

Robin L. Fenwick, MMC, City Clerk

**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 purchase 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.

Attachment 1

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. L0527**

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 Charles Street Wastewater Lift Station Rehabilitation. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on July 1, 2026 and ends at the expiration 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.

No retainage is required under this 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/subawards 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.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Port Orange Charles Street Wastewater Lift Station Rehabilitation

PROJECT LOCATION: The Project will be located in the City of Port Orange within Volusia County; Lat/Long (29.1462, -80.9986).

PROJECT DESCRIPTION: The City of Port Orange (Grantee) will make improvements to the Charles Street Wastewater Lift Station. Improvements include elevating the existing wet well and electrical components above the applicable floodplain elevation and upsizing the existing force main.

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 the Port Orange Charles Street Wastewater Lift Station Rehabilitation in accordance with the final design. The Grantee will submit through the Department's GIS web-interface data collection tool, parcel-level data identifying collection system extensions; lift stations and other infrastructure associated with the grant; and both the parcels connected to sewer and the parcels where sewer has been made available for connection but not yet connected along with associated grant information. Project management activities, including field engineering services, construction observation and inspections, site meetings with construction contractor(s) and design professionals, and overall construction coordination and supervision, are eligible under this task.

Documentation: The Grantee will submit:

- 1) a copy of the final design (this is a no cost deliverable);
- 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.

For the final documentation, the Grantee will also submit:

- 3) an email from the Department's GIS web-interface data collection tool, confirming that data for the project has been submitted.

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.

Budget Narrative: Impact fees (also called infrastructure or capital fees) are not eligible costs under this task.

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.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Construction	Contractual Services	\$750,000	07/01/2026	07/31/2029
Total:			\$750,000		

**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: If 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 <u>Matching</u> 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	2026-2027	37.039	Statewide Water Quality Restoration Projects – GAA LI 1766A, WPSPTF	\$750,000.00	140047
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					\$ 750,000.00	
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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.

**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.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit J
OSTDS/EHD Grants Data Collection Tool**

The current **OSTDS/EHD Grants Data Collection Tool** for this grant can be found on the Department's website at this link:

<https://experience.arcgis.com/experience/a68fffc3004f4c53b7de40ceda3842f8/>

This tool shall be used for grant agreements for construction of septic to sewer, septic upgrades, sewer extension, other sewer system improvements or for connection to central sewer to collect parcel-level data identifying collection system extensions; lift stations and other infrastructure associated. This requirement will be listed in the Deliverables section of the grant work plan if it is required.

The User Guide for this tool can be found here:

<https://experience.arcgis.com/experience/a68fffc3004f4c53b7de40ceda3842f8/page/User-Guide>



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B10) Resolution No. 26-44 - Approval of Grant Agreement (No. L0528) with the Florida Department of Environmental Protection for the Portona Stormwater Ponds and Infrastructure Upgrades Project

DEPARTMENT: Engineering

RECOMMENDED MOTION: Move to approve Resolution No. 26-44.

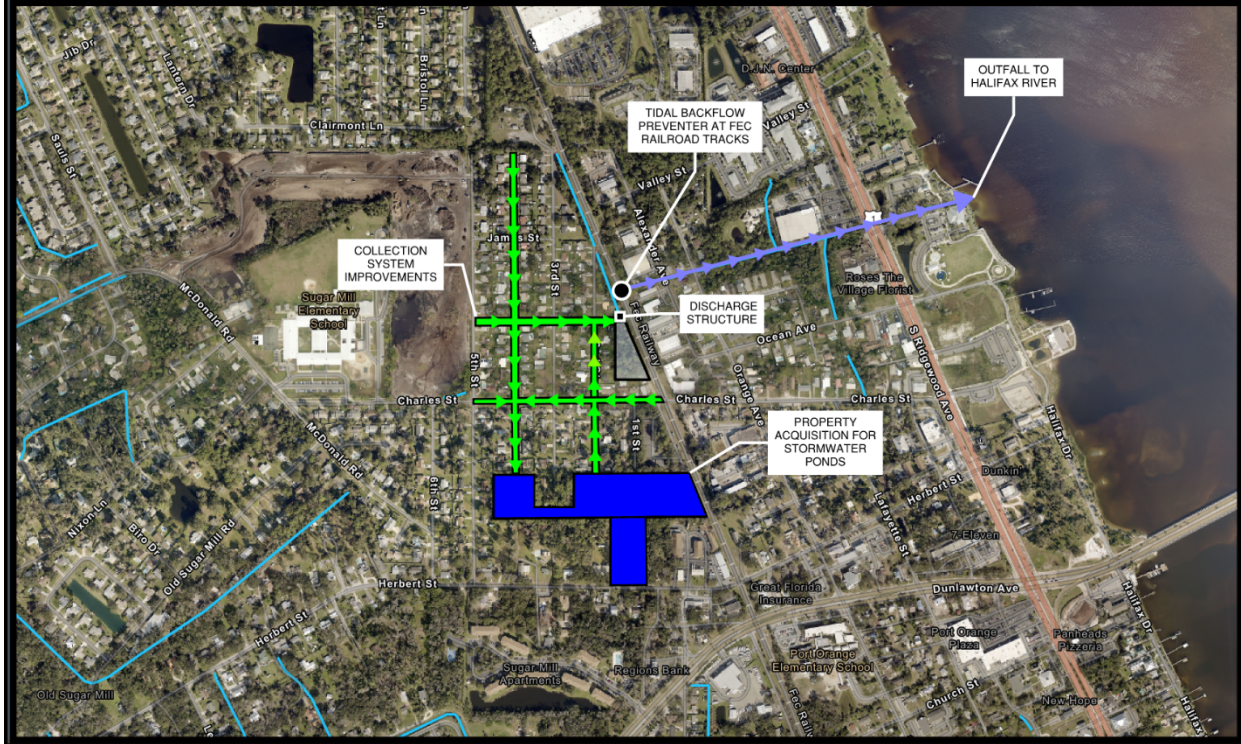
SUMMARY: In July 2026, the City received the draft grant agreement from the Florida Department of Environmental Protection (FDEP) for the legislative appropriations grant in the amount of \$1,232,500 to fund the Portona Stormwater Ponds and Infrastructure Upgrades Project.

The project area is located within one of the City's older neighborhoods, where many homes were constructed in the 1970s, prior to the City's adoption of modern stormwater management requirements in the early 1990s. As a result, the area has experienced significant flooding, including during Hurricanes Ian and Milton. The proposed improvements are intended to reduce the risk of structural flooding during hurricanes and other severe rainfall events, thereby enhancing the neighborhood's overall resilience to stormwater impacts.

The project scope includes the construction of a new stormwater pond, installation of new stormwater pipes and inlets to convey runoff to the pond, and installation of a backflow prevention device at an existing outfall beneath the Florida East Coast (FEC) railroad tracks. These improvements will enhance drainage capacity, reduce flood risk, and increase the overall resilience of the surrounding neighborhood.



Portona Drainage Improvements



PRESENTER: Junos Reed

ATTACHMENTS:

1.	Resolution No. 26-44	Resolution No. 26-44 .pdf
2.	L0528 - Agreement (for signature)	L0528 - Agreement (for signature).pdf

Nikki Smith	Created/Initiated - 08/25/2026
Richard Colby	Approved - 08/25/2026
Junos Reed	Approved - 08/27/2026
Nikki Smith	Approved - 08/27/2026
Sue Wang	Approved - 08/28/2026
Matthew Jones	Approved - 09/02/2026
Wayne Clark	Final Approval - 09/04/2026

RESOLUTION NO. 26-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ACCEPTING A \$1,232,500 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 L0528) FOR THE PURPOSE OF THE PORT ORANGE PORTONA STORMWATER PONDS & INFRASTRUCTURE UPGRADES PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST ALL NECESSARY DOCUMENTS FOR SAID GRANT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has been awarded a \$1,232,500 grant from the State of Florida Department of Environmental Protection as part of the Fiscal Year 2026-2027 State of Florida legislative appropriations; and

WHEREAS, in order to receive said grant, the City must approve and enter into a standard grant agreement 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.

Section 2. The City Council of the City of Port Orange, Florida, hereby approves and accepts the State of Florida Department of Environmental Protection Grant in the amount of \$1,232,500 and enter into a grant agreement with the State of Florida Department of Environmental Protection for the Port Orange Portona Stormwater Ponds & Infrastructure Upgrades Project.

Section 3. The Mayor and City Clerk are 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): **Port Orange Portona Stormwater Ponds & Infrastructure Upgrades** Agreement Number: **L0528**

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: **July 1, 2026** Date of Expiration: **January 31, 2030**

4. Project Number: **(If different from Agreement Number)** Project Location(s): **Lat/Long: (29.1447, -80.9954)**

Project Description: **The Grantee will construct two new stormwater ponds, along with new pipes and inlets to route the stormwater to the new ponds, and the addition of a backflow prevention device to an existing outfall beneath the Florida East Coast (FEC) railroad tracks.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line-Item Appropriations:	Amount per Source(s):
\$ 1,232,500.00	☒ State ☐ Federal	LP, GAA LI 1766A, FY 26-27, WPSPTF	\$ 1,232,500.00
	☐ State ☐ Federal		\$
	☐ State ☐ Federal		\$
	☐ Grantee Match		\$
Total Amount of Funding + Grantee Match, if any:			\$ 1,232,500.00

6. Department's Grant Manager Name: Mitch Holmes or successor Address: Florida Dept. of Environmental Protection 3900 Commonwealth Blvd., MS 3602 Tallahassee, FL 32399-3000 Phone: 850-245-2963 Email: Mitch.Holmes@FloridaDEP.gov	Grantee's Grant Manager Name: Nikki Smith or successor Address: City of Port Orange 1000 City Center Circle Port Orange, FL 32129 Phone: 386-506-5714 Email: NSmith@port-orange.org
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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

Scott Stiltner, Mayor

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

Mitch Holmes, DEP Grant Manager

Kyleigh Revis, DEP QC Reviewer

CITY OF PORT ORANGE ADDITIONAL SIGNATURES

Attest: _____

Robin L. Fenwick, MMC, City Clerk

**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 purchase 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.

Attachment 1

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. L0528**

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 Portona Stormwater Ponds & Infrastructure Upgrades. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on July 1, 2026 and ends at the expiration 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.

No retainage is required under this 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/subawards 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.

**ATTACHMENT 3
GRANT WORK PLAN**

PROJECT TITLE: Port Orange Portona Stormwater Ponds & Infrastructure Upgrades

PROJECT LOCATION: The Project will be located in the City of Port Orange within Volusia County; Lat/Long (29.1447, -80.9954).

PROJECT DESCRIPTION: The City of Port Orange (Grantee) will construct two new stormwater ponds, along with new pipes and inlets to route the stormwater to the new ponds, and the addition of a backflow prevention device to an existing outfall beneath the Florida East Coast (FEC) railroad tracks.

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 the Port Orange Portona Stormwater Ponds & Infrastructure Upgrades in accordance with the final design. Project management activities, including field engineering services, construction observation and inspections, site meetings with construction contractor(s) and design professionals, and overall construction coordination and supervision, are eligible under this task.

Documentation: The Grantee will submit:

- 1) a copy of the final design (this is a no cost deliverable); and
- 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.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Construction	Contractual Services	\$1,232,500	07/01/2026	07/31/2029
Total:			\$1,232,500		

**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		CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
	Federal Agency			\$	

Note: If 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	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
Federal Program A	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	State Appropriation Category
Original Agreement	Department of Environmental Protection	2026-2027	37.039	Statewide Water Quality Restoration Projects – GAA LI 1766A, WPSPTF	\$1,232,500.00 140047
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	State Appropriation Category

Total Award	\$1,232,500.00
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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.

**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 9/15/2026

SUBJECT: (B11) Resolution No. 26-45 - Approval of Interfund Loans from Public Utilities to finance the acquisition of Fleet vehicles and equipment

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve Resolution No. 26-45.

SUMMARY: The adopted FY 25-26 budget includes approximately \$15 million for city-wide fleet replacement and additions. About two thirds of this cost was planned to be funded with debt and the remaining funds are included in the fleet fund and other sources. Debt funding in the current Fiscal Year (FY) was planned only for higher cost items such as fire trucks, ambulances, and larger stormwater equipment. The City has utilized debt financing for less expensive fleet replacement, such as police vehicles, in the past. That practice has been discontinued, and those items will be purchased under the more traditional fleet replacement fund going forward.

In prior years, the City borrowed fleet funds from banks. For the current FY, Staff recommends financing these items by borrowing from the Utilities unrestricted fund balance and repaying it with interest at the rate it is generally earning as invested (3%). This option would lower overall costs based on slightly lower interest rates and no processing and closing costs. It would also reduce the complexity of the process. This option will not impact the health of the utility fund as it represents only about a third of the current fund balance and it will be fully repaid so the reserves will be available as intended to support the utilities fund if needed during construction of the Water Reclamation Facility upgrades and other future capital projects.

PRESENTER: Sue Wang

ATTACHMENTS:

1.	Resolution No. 26-45 Authorizing Interfund Loan 09 03 26(1016483.3) MJrev9.4.26 REV	Resolution No. 26-45 Authorizing Interfund Loan 09 03 26(1016483.3) MJrev9.4.26 REV.pdf
2.	Interfund loans - 9-4-26	Interfund loans - 9-4-26.xlsx

Sue Wang	Created/Initiated - 08/26/2026
Sue Wang	Approved - 08/26/2026
Sue Wang	Approved - 08/26/2026
Matthew Jones	Approved - 09/04/2026
Wayne Clark	Final Approval - 09/04/2026

RESOLUTION NO. 26-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA, AUTHORIZING AN INTERFUND LOAN FROM LEGALLY AVAILABLE REVENUES OF THE CITY'S WATER AND SEWER UTILITY SYSTEM TO FINANCE THE ACQUISITION OF VEHICLES AND EQUIPMENT NECESSARY FOR THE CITY'S PROVISION OF POLICE, FIRE AND STORMWATER SERVICES; PROVIDING FOR THE TERM OF REPAYMENT; PROVIDING THAT THE PAYMENT OBLIGATION SHALL BE SUBORDINATE TO ANY BOND, NOTE, LOAN, LEASE, OR OTHER INDEBTEDNESS OF THE CITY; PROVIDING THAT REPAYMENT SHALL BE SUBJECT TO ANNUAL APPROPRIATION; AUTHORIZING RELATED ACTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange, Florida (the "City"), is a duly created and validly existing municipal corporation of the State of Florida and possesses home rule powers under Article VIII, Section 2(b) of the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City owns and operates a water and sewer utility system (the "Utility System") and receives operating revenues from the operation of the Utility System; and

WHEREAS, based upon the City's audited financial statements for the fiscal year ended September 30, 2025, the Finance Director has determined that the Utility System holds unrestricted cash carried forward from prior fiscal years in its operating account, and that the Interfund Loan authorized herein will be funded solely from such unrestricted operating moneys and not from any fund or account established for the benefit of the holders of Utility System bonds or other Utility System indebtedness, including any debt service account, debt service reserve account, renewal and replacement fund, or fund or account holding impact fees; and

WHEREAS, the Utility System is subject to City Resolution No. 93-16, adopted March 11, 1993, as amended and restated by City Resolution No. 03-46, adopted June 5, 2003, and as further amended by City Resolution No. 12-29 (collectively, and as may be further amended from time to time, the "Bond Resolution"), Section 4.02.B of which requires that all Revenues remaining in the Revenue Fund be applied each month in the order of priority therein specified, and Section 4.02.B(7) of which provides that the balance of any revenues remaining after the above required payments, including deficiencies for prior payments, have been made may be used by the City for any lawful purpose; and

WHEREAS, the Finance Director has determined that the moneys proposed to be advanced under the Interfund Loan constitute revenues remaining after all deposits and

payments required by Sections 4.02.B(1) through 4.02.B(6) of the Bond Resolution have been made in full, and that such moneys are accordingly available for any lawful purpose of the City under Section 4.02.B(7) of the Bond Resolution, the making of the Interfund Loan being such a lawful purpose; and

WHEREAS, the City has determined that the acquisition of certain vehicles and equipment necessary for the City's provision of police, fire and stormwater services (collectively, the "Vehicles and Equipment") is necessary and desirable to promote public safety, protect life and property, and serve a valid municipal and public purpose; and

WHEREAS, the City Council finds that legally available operating revenues of the Utility System may be advanced on an interfund loan basis to finance all or a portion of the costs of acquiring the Vehicles and Equipment, provided that such advance does not impair the operation, maintenance, renewal, replacement, or legally required financial obligations of the Utility System; and

WHEREAS, the City Council desires to authorize such interfund loan and to provide for repayment to the Utility System over a term of years corresponding to the expected useful life of the Vehicles and Equipment, subject in all respects to the subordination provisions set forth herein; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Bond Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as legislative findings of the City Council.

Section 2. Authorization of Interfund Loan. Subject to the limitations and conditions set forth in this Resolution, the City Council hereby authorizes an interfund loan from legally available operating revenues of the Utility System to the City's general governmental funds in an aggregate principal amount not to exceed \$7,761,312 (the "Interfund Loan"), consisting of two phases as follows: (a) Phase 1, in an amount not to exceed \$6,461,312, to pay or reimburse the costs of the Vehicles and Equipment identified in Exhibit A hereto under the heading for repayment beginning in the fiscal year commencing October 1, 2026 ("FY27"), which Phase 1 is hereby authorized without further action of the City Council; and (b) Phase 2, in an amount not to exceed \$1,300,000, to pay the costs of the Vehicles and Equipment identified in Exhibit A hereto under the heading for repayment beginning in the fiscal year commencing October 1, 2027 ("FY28"), which Phase 2 is authorized only if and to the extent that the City Council appropriates

legally available funds for such purpose in the City's annual budget for FY 28, as adopted following public hearing in accordance with applicable law; each phase solely for the purpose of paying or reimbursing the costs of acquiring the Vehicles and Equipment described in Exhibit A hereto, together with other incidental costs. The amount borrowed for each of the items of Vehicles and Equipment, the life cycle, purchase cost, beginning and ending year of repayment, together with the annual payment amount for each of the items of Vehicles and Equipment, is set forth in Exhibit A which is hereby approved.

Section 3. Source of Loaned Funds. The Interfund Loan shall be made only from Utility System operating revenues that the City Manager and Finance Director determine are legally available after provision has been made for the Cost of Operation and Maintenance, deposits to the Sinking Fund and Bond Amortization Fund, deposits to the Reserve Account and any separate additional reserve account, deposits required upon the issuance of Additional Parity Obligations, debt service and reserve requirements of any obligations of the City junior and subordinate to the lien of the Bonds on the revenues of the Utility System, and deposits to the Renewal and Replacement Fund, in each case as and to the extent required by Section 4.02.B of the Bond Resolution, such that the moneys so advanced constitute revenues available for any lawful purpose under Section 4.02.B(7) of the Bond Resolution. No portion of such funds constitutes moneys required to be deposited or retained in any fund or account established under Resolution No. 03-46, as amended. No advance under the Interfund Loan shall be made from any fund or account established for the benefit of the holders of Utility System bonds or other Utility System indebtedness, including any debt service account, debt service reserve account, renewal and replacement fund, or fund or account holding impact fees.

Section 4. Repayment Terms. As set forth in Exhibit A, the Interfund Loan shall be repaid to the Utility System in two series, each corresponding to the expected useful life of the Vehicles and Equipment financed thereby: (a) amounts advanced for Vehicles and Equipment having an expected useful life of five (5) years or less shall be repaid over a term not exceeding five (5) years from the date such funds are advanced; (b) amounts advanced for all other Vehicles and Equipment shall be repaid over a term not exceeding eight (8) years from the date such funds are advanced; and amounts advanced for Vehicles and Equipment having an expected useful life of ten (10) years or less shall be repaid over a term not exceeding ten (10) years from the date such funds are advanced. Each series shall bear interest at an annual rate of four percent (3.00%), which the City Council hereby determines to be a competitive market rate of return to the Utility System on comparable investments. Repayments shall be made in annual installments of combined principal and interest for each series, or more frequently as determined administratively by the City, from non-ad valorem revenues of the City legally available for such purpose, commencing

with the schedule set forth in Exhibit A. The City may prepay all or any portion of the Interfund Loan at any time without premium or penalty.

Section 5. Subordinate Payment Obligation; Annual Appropriation. The obligation to repay the Interfund Loan is expressly subordinate and junior in all respects to the payment of principal, interest, premiums, fees, charges, reserve requirements, and all other obligations due on or with respect to any bond, note, loan, lease, installment purchase agreement, line of credit, or other indebtedness or financing obligation of the City, whether now outstanding or hereafter incurred. Nothing in this Resolution shall be construed as a pledge of ad valorem taxation, a lien upon or pledge of Utility System revenues, or a covenant to levy or collect any tax. The obligation of the City to repay the Interfund Loan from non-ad valorem revenues is further subject in all respects to the appropriation of legally available non-ad valorem revenues for such purpose by the City Council in the City's annual budget for each fiscal year in which a repayment installment is scheduled. Nothing in this Resolution shall be construed as (a) creating any legal or equitable obligation of the City Council to appropriate moneys in any fiscal year, (b) limiting or restricting the discretion of any future City Council in the preparation, consideration, or adoption of any annual budget, or (c) a covenant to budget and appropriate non-ad valorem revenues. Notwithstanding Section 4 hereof, the failure of the City Council to appropriate moneys for repayment in any fiscal year shall not constitute a default, shall not accelerate the Interfund Loan, and shall not give rise to any claim against the City or any of its funds; in such event the unpaid balance of the affected series shall remain outstanding and the repayment schedule for such series shall be extended by the period of non-appropriation, subject to appropriation in subsequent fiscal years. No advance under the Interfund Loan shall be made except from amounts duly appropriated for such purpose in the City's annual budget adopted following public hearing in accordance with applicable law.

Section 6. No Impairment of Utility System. No advance under the Interfund Loan shall be made, and no repayment shall be required, to the extent such advance or repayment would violate any applicable law, ordinance, bond resolution, loan agreement, covenant, contractual restriction, or other obligation applicable to the Utility System or the City.

Section 7. Administrative Authority. The Mayor, City Manager, Finance Director, City Clerk, City Attorney, and other appropriate officers and employees of the City are hereby authorized and directed to take all actions necessary or desirable to carry out the intent of this Resolution, including establishing internal accounting entries, documenting advances and repayments, and executing such certificates, purchase orders, agreements, and other instruments as may be necessary or appropriate, consistent with this Resolution.

Section 8. Budgetary Matters. The City Manager and Finance Director are authorized to make or recommend such budget amendments, transfers, and accounting adjustments as may be necessary to implement the Interfund Loan and the acquisition of the Vehicles and Equipment, subject to applicable law and City procedures.

Section 9. Severability. If any section, sentence, clause, or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining portions of this Resolution, which shall remain in full force and effect.

Section 10. Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Council of the City of Port Orange, Florida, this ____ day of _____, 2026.

CITY OF PORT ORANGE, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

EXHIBIT A

DESCRIPTION OF VEHICLES AND EQUIPMENT

AND TERMS OF INTERFUND LOAN

Department	Asset Type	Asset# to be replaced	Life Cycle	Purchase Cost	Budget Year	Repayment Beginning Year	Repayment End Year	Annual Payment
Fire	Ambulance	2265	5	398,714	FY26	FY27	FY31	87,061
Stormwater	Excavator	9838	8	364,423	FY26	FY27	FY34	51,914
Stormwater	Vacuum Truck	2091	8	576,749	FY26	FY27	FY34	82,162
Fire	Fire Truck	1793	10	366,535	FY26	FY27	FY36	42,969
Fire	Fire Truck	2039	10	1,952,053	FY26	FY27	FY36	228,840
Fire	Fire Truck	New	10	1,379,725	FY26	FY27	FY36	161,746
Fire	Fire Truck	New	10	1,423,113	FY26	FY27	FY36	166,832
Fire	Ambulance	2228	5	500,000	FY27	FY28	FY32	109,177
Stormwater	Excavator	10162	8	800,000	FY27	FY28	FY35	113,965
Interest Rate	3%							
Total to borrow from Public Utilities from FY26 budget				6,461,312				
Total to borrow from Public Utilities from FY27 budget				1,300,000				
Total borrowing from Public Utilities				7,761,312				
Annual Payments			5-Yr Life Cycles	8-Yr Life Cycles	10-Yr Life Cycles			
	FY27		87,061	134,076	600,387			
	FY28		196,238	248,041	600,387			
	FY29		196,238	248,041	600,387			
	FY30		196,238	248,041	600,387			
	FY31		196,238	248,041	600,387			
	FY32		109,177	248,041	600,387			
	FY33			248,041	600,387			
	FY34			248,041	600,387			
	FY35			113,965	600,387			
	FY36				600,387			

Department	Asset Type	Asset# to be replaced	Life Cycle	Purchase Cost
Fire	Ambulance	2265	5	398,714
Stormwater	Excavator	9838	8	364,423
Stormwater	Vacuum Truck	2091	8	576,749
Fire	Fire Truck	1793	10	366,535
Fire	Fire Truck	2039	10	1,952,053
Fire	Fire Truck	New	10	1,379,725
Fire	Fire Truck	New	10	1,423,113
Fire	Ambulance	2228	5	500,000
Stormwater	Excavator	10162	8	800,000

Interest Rate 3%

Total to borrow from Public Utilities from FY26 budget 6,461,312

Total to borrow from Public Utilities from FY27 budget 1,300,000

Total borrowing from Public Utilities 7,761,312

Annual Payments	5-Yr Life Cycles	8-Yr Life Cycles
FY27	87,061	134,076
FY28	196,238	248,041
FY29	196,238	248,041
FY30	196,238	248,041
FY31	196,238	248,041
FY32	109,177	248,041
FY33		248,041
FY34		248,041
FY35		113,965
FY36		

Budget Year	Repayment Beginning Year	Repayment End Year	Annual Payment
FY26	FY27	FY31	87,061
FY26	FY27	FY34	51,914
FY26	FY27	FY34	82,162
FY26	FY27	FY36	42,969
FY26	FY27	FY36	228,840
FY26	FY27	FY36	161,746
FY26	FY27	FY36	166,832
FY27	FY28	FY32	109,177
FY27	FY28	FY35	113,965

10-Yr Life Cycles

600,387

600,387

600,387

600,387

600,387

600,387

600,387

600,387

600,387

600,387



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B12) Resolution No. 26-48 - Adopting the Stormwater Fee Assessment Roll and Approving the Stormwater Fee for Fiscal Year 2026-2027 with no increase from the prior year

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve Resolution No. 26-48.

SUMMARY: This resolution adopts the Non-Ad Valorem Assessment Roll for Fiscal Year 2027 and approves the current stormwater utility fee rate with no rate change from the prior fiscal year. Pursuant to Section 197.3632, Florida Statutes, the City must certify the assessment roll (list of parcels) to the Volusia County Tax Collector each year to facilitate collection of the stormwater utility fee through the uniform method of collection, so that the assessment is included on the annual property tax bill.

The resolution approves the current stormwater fee rate schedule previously approved by City Resolution No. 23-21, including a maximum rate of \$160 per Equivalent Dwelling Unit (EDU) for Fiscal Year 2027. One EDU is equivalent to 3,050 square feet of impervious surface, with residential properties generally assigned one EDU per dwelling unit and non-residential properties assessed based on impervious surface area.

Approval of this resolution will also authorize the Finance Director to certify and deliver the Fiscal Year 2027 Non-Ad Valorem Assessment Roll to the Volusia County Tax Collector by September 15, 2026, as required for collection on the annual property tax bill.

PRESENTER: Sue Wang

ATTACHMENTS:

1.	2026 Resolution Approving Stormwater NAV Roll(1021620.2)	2026 Resolution Approving Stormwater NAV Roll(1021620.2).docx
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Robin Fenwick
Sue Wang

Created/Initiated - 09/04/2026
Approved - 09/08/2026

Matthew Jones
Wayne Clark

Approved - 09/08/2026
Final Approval - 09/09/2026

RESOLUTION NO. 26-48

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA APPROVING THE STORMWATER UTILITY FEE RATES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2027 IN ACCORDANCE WITH CHAPTER 74, SECTIONS 156-164 OF THE CITY CODE OF ORDINANCES; PROVIDING FOR COLLECTION OF THE STORMWATER FEES AS NON-AD VALOREM ASSESSMENTS PURSUANT TO THE TAX BILL COLLECTION METHOD AUTHORIZED BY SECTION 197.3632, FLORIDA STATUTES; APPROVING THE NON-AD VALOREM ASSESSMENT ROLL FOR SUCH FEES; DIRECTING CERTIFICATION OF SUCH ROLL TO THE VOLUSIA COUNTY TAX COLLECTOR; RATIFYING AND CONFIRMING CITY RESOLUTION NO. 23-21; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange (the "City") is authorized by Article VIII, Section 2(b) of the Florida Constitution and Sections 166.021, 197.3632 and 403.0893, Florida Statutes to establish a stormwater drainage utility, to impose annual stormwater utility fees sufficient to plan, construct, operate and maintain stormwater management systems, and to provide for the collection of such fees pursuant to the uniform method by which the fees are included on the annual property tax bill mailed by the Volusia County Tax Collector each November; and

WHEREAS, in accordance therewith, the City Council adopted Sections 74-156 through 74-164 of the City of Port Orange Code of Ordinances (as amended, the "Stormwater Ordinance") which established a stormwater drainage utility (the "Stormwater Utility System") and provides for the calculation, imposition and collection of stormwater drainage utility fees (the "Stormwater Fees"); and

WHEREAS, the City imposes the Stormwater Fees each year to fund the annual provision of stormwater management services and facilities, and collects the fees as non-ad valorem assessments included on the annual property tax bill, as authorized by Section 197.3632, Florida Statutes (the "Uniform Collection Act") and Section 403.0893, Florida Statutes; and

WHEREAS, pursuant to the Uniform Collection Act, the City must certify a non-ad valorem assessment roll to the Volusia County Tax Collector by September 15th of each year in order to collect the Stormwater Fees on the annual property tax bill; and

WHEREAS, the non-ad valorem assessment roll includes the list of the parcels from which the Stormwater Fees will be collected on the annual property tax bill, and the amount of the fee imposed against each parcel; and

WHEREAS, the Stormwater Utility Rate Study prepared by Raftelis Financial Consultants, Inc., a copy of which was attached to City Resolution No. 23-21 (the "Rate Study"), summarized the Stormwater Utility System's projected revenue requirements for the five fiscal year period of October 1, 2022 through September 30, 2027 and identified the need for Stormwater Fee rate adjustments during such period due to anticipated changes in operating costs, increases to annual debt services payments for debt obligations incurred by the City to finance stormwater-related capital improvements, and the amount and timing of additional capital improvements; and

WHEREAS, the Stormwater Fee rate schedule approved by City Resolution No. 23-21 will allow the City to maintain a sustainable financial position for the Stormwater Utility System that is consistent with performance criteria established by the City and based on utility industry standards; and

WHEREAS, such rate increases will provide for the recovery of the total costs anticipated for the Stormwater Utility system, thereby ensuring the utility system remains a self-supporting enterprise; and

WHEREAS, this Resolution is adopted for purposes of adopting and certifying the non-ad valorem assessment roll for fiscal year 2027, based on the Stormwater Fee rates approved by Resolution No. 23-21; and

WHEREAS, the City's Stormwater Utility System and the services and facilities associated therewith provide for the proper and safe collection, storage, control, management, treatment and conveyance of the stormwater burden generated by the real property subject to the Stormwater Fees approved hereunder; and

WHEREAS, the benefits derived from the stormwater management services and facilities provided by the City exceed the amount of the Stormwater Fees imposed hereunder, and the Stormwater Fees imposed against any tax parcel subject thereto does not exceed the proportional benefits that such tax parcel will receive compared to any other tax parcel; and

WHEREAS, the City Council hereby finds and determines that the Stormwater Fees for Fiscal Year 2027 imposed in accordance with this Resolution provide an equitable method of funding the City's stormwater management services and facilities by fairly and reasonably apportioning the costs thereof among the real property specially benefited thereby.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Recitals set forth above are hereby incorporated as legislative findings of the City Council.

Section 2. The Mayor and City Council of the City of Port Orange, Florida hereby ratify, confirm and approve the Stormwater Fee rate schedule approved by City Resolution No. 23-221. The Stormwater Fee rates for Fiscal Year 2027 and each year thereafter are set forth in Section 4 hereof. Non-ad valorem assessments in the amount of the Stormwater Fees for Fiscal Year 2027, are hereby imposed based upon such rate schedule.

The Stormwater Fees for Fiscal Year 2027 and each year thereafter shall be collected pursuant to the Uniform Collection Act. Upon adoption hereof, the Finance Director shall cause the certification and delivery of the Non-Ad Valorem Assessment Roll for such fees to the Volusia County Tax Collector by September 15, 2026 and by September 15 of each successive year, in the manner prescribed by the Uniform Collection Act; provided, however that the Finance Director may cause certification and delivery of such roll by an earlier date if required or requested by the Tax Collector. The roll as delivered to the Tax Collector shall be accompanied by a Certificate to Non-Ad Valorem Assessment Roll in substantially the form attached hereto as Appendix A. The Non-Ad Valorem Assessment Roll, a copy of which is available in the Port Orange City Clerk's Office located at 1000 City Center Circle, Port Orange, Florida 32129, is hereby approved and incorporated herein by reference.

The Stormwater Fees for certain tax parcels shall be collected by direct billing instead of non-ad valorem assessments pursuant to the Uniform Collection Act. A list of such tax parcels is available in the office of the City Clerk.

Section 3. The Rate Study uses the term "Equivalent Dwelling Unit (EDU)" for the unit of measurement applied against each developed parcel to determine the relative demand for stormwater services created by development of such parcel and the amount of such parcel's Stormwater Fee. One EDU equals 3,050 square feet of impervious surfaces, with one EDU assigned per dwelling unit on residential property and the total amount of impervious surface area on non-residential property, in square feet, divided by 3,050 square feet to determine the number of EDUs assigned. The number of EDUs assigned to each parcel is then multiplied by the annual rate to determine the amount of the Stormwater Fee imposed against such parcel, with all developed parcels assigned a minimum of one EDU. The Stormwater Ordinance has historically used the term "Single-Family Unit (SFU)" as the equivalency unit for calculating the amount of the Stormwater, though has been amended to adopt the term Equivalent Dwelling Unit as the designated unit of measurement, to conform to the Rate Study and current naming conventions in widespread use throughout the stormwater utility industry. While City Resolution No. 23-21 used the term "SFU" when referring to the unit of measurement for the Stormwater Fees, this Resolution and other-stormwater resolutions in the future shall use the term "EDU" in accordance with the amended Stormwater Ordinance. The use of impervious surface area is hereby approved, ratified and confirmed as a fair and reasonable method of apportioning the benefits conveyed by the City's stormwater drainage utility among the real property specially benefitted thereby.

Section 4. The estimated maximum rate of the Non-Ad Valorem Assessments for Fiscal Year 2027 and fiscal years thereafter set forth in City Resolution No. 23-21 are hereby ratified and confirmed. Such rates are as follows:

Fiscal Year 2027 (ending September 30, 2027)	Fiscal Year 2028 (ending September 30, 2028) and each fiscal year thereafter
\$160 per EDU	\$160 per EDU

Such maximum rates were included in the mailed notices to affected property owners previously provided by the City, and such rates may be adopted without further notice to affected property owners unless notice is required by the Uniform Collection Act. The Stormwater Fee is an annual charge that will continue year after year unless or until amended by resolution of City Council. The Stormwater Fee rates approved herein are hereby determined to be reasonable and necessary to pay for the operation, maintenance, administration and capital improvements of the Stormwater Utility System.

Section 5. Proceeds of the Stormwater Fee, after payment of any costs or expenses resulting from annual administration and collection and the City's use of the Uniform Collection Act, may only be expended for purposes related to the City's provision of stormwater services and the Stormwater Utility System, as set forth in the Stormwater Ordinance.

Section 6. All resolutions or parts thereof in conflict herewith or contrary hereto are hereby repealed to the extent of such conflict.

Section 7. If any section, subsection, clause, phrase, or portion of this resolution, or application hereof, is for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or provision and such holding shall not affect the validity of the remaining portions or applications hereof.

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Section 8. City Resolution No. 23-21 is hereby ratified and confirmed.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the 15th day of September, 2026

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

APPENDIX A

FORM OF CERTIFICATE OF NON-AD VALOREM ASSESSMENT ROLL

I HEREBY CERTIFY that I am the Finance Director and authorized agent of the City of Port Orange (the "City"), located in Volusia County, Florida; as such I have satisfied myself that all property included or includable on the City's non-ad valorem assessment roll for stormwater utility drainage fees (the "Non-Ad Valorem Assessment Roll") is properly assessed so far as I have been able to ascertain; and that all required extensions on the above described roll to show the non-ad valorem assessments attributable to the property listed therein have been made pursuant to law.

I FURTHER CERTIFY that, in accordance with the Uniform Assessment Collection Act, this certificate and the herein described Non-Ad Valorem Assessment Roll will be delivered to the Volusia County Tax Collector by September 15, 2026.

IN WITNESS WHEREOF, I have subscribed this certificate and directed the same to be delivered to the Volusia County Tax Collector and made part of the above described Non-Ad Valorem Assessment Roll this _____ day of September, 2026.

PORT ORANGE, FLORIDA

By: _____
Finance Director



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (B13) Approval of Arthaus Street Painting Festival Fee Waiver Request

DEPARTMENT: Parks & Recreation

RECOMMENDED MOTION: Move to approve the fee waiver request for the Arthaus Street Painting Festival event at City Center and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: Arthaus is requesting a fee waiver for its Arthaus Street Painting Festival, scheduled for October 17 and 18 at City Center Park. The event times are: Saturday 10/17 set up from 6am-9am, event hours 9am-5pm and clean up until 6pm. Sunday 10/18 set up 9am-10am event 10am-4pm and clean up until 6pm.

The event will include chalk art displays on City Hall Plaza which is typically part of Port Orange Family Days, along with approximately 20 vendors and two food trucks. Arthaus is also planning a small parade featuring school bands and walking groups, similar in concept to the Family Days parade but on a smaller scale. The Amphitheater will be reserved for a short period to serve as the parade's starting location, and appropriate Police Department staffing will be scheduled to assist with the necessary road closure.

The total event rental fees are \$4,427.00. Under Fee Matrix Resolution No. 19-51, Arthaus qualifies for a 75% fee waiver of \$3,320.25, leaving a balance of \$1,106.75. Arthaus is requesting a 100% waiver of the event rental fees, which requires City Council approval. Staff recommends approval of the additional fee waiver as a one-time exception due to Port Orange Family Days not being held this year and Arthaus stepping up to provide a portion of the event.



Event Map

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	ArtHaus 2026 - Rental Application	ArtHaus 2026 - Rental Application.pdf
2.	ArtHaus 2026 - Invoice	ArtHaus 2026 - Invoice.pdf
3.	Reso 19-51	Reso 19-51.pdf
4.	ArtHaus Family Arts Festival Site Map	ArtHaus Family Arts Festival Site Map.pdf

Peter Ferreira
Susan Lovallo
Sue Wang
Matthew Jones
Wayne Clark

Created/Initiated - 08/25/2026
Approved - 08/25/2026
Approved - 08/25/2026
Approved - 09/04/2026
Final Approval - 09/04/2026



CITY OF PORT ORANGE SPECIAL EVENT APPLICATION

THIS FORM MUST BE COMPLETED IN FULL AND SUBMITTED 30 DAYS PRIOR TO THE EVENT
Port Orange Parks and Recreation, 1395 Dunlawton Ave, Port Orange, FL 32127 Fax: 386-756-5351

A deposit of 50% of the total rental cost, up to \$100, will be due immediately to complete your reservation.

Accepted forms of payment include cash, credit card, or business check (no personal checks).

SECTION 1: LICENSEE INFORMATION

Individual

(This section is for use by individuals only)

Name: _____ Email: _____
Address: _____ City: _____ State: FL Zip Code: _____
Daytime Phone: _____ Cell: _____ Fax No: _____
Event Point of Contact (POC): _____ POC Phone: _____

Company/Organization

Company/Organization Name: ArtHaus Foundation, Inc. Email: office@arthaus.org
Address: 4655 City Center Cir., Suite A City: Port Orange State: FL Zip Code: 32129
Organization Website: www.arthaus.org
Authorized Representative Point of Contact (POC) Name & Title: Cameron Vintson, Executive Director
POC Daytime Phone: 386.767.0076 Cell: 256.525.1564 Fax No: _____

Tax Exempt: ☒ Yes ☐ No

(Florida Exemption Certificate Required)

SECTION 2: EVENT INFORMATION

Date of Event: October 17th & 18th Name of Event: The 30th Annual ArtHaus Street Painting Festival & Family Arts Fair
Describe Event: ArtHaus celebrates its 30th Annual Street Painting Festival at Port Orange City Hall with professional chalk artists, arts and community vendors, a massive Kids Zone, delicious food trucks, and fun for the whole family.

Rental Hours: Saturday: 6:00 AM/PM to 6:00 AM/PM
Sunday: 9:00

The total number of rented hours shall include the time necessary for set-up and clean-up.

Event Timeframe: Set-Up/Assembly: Sat: 6-9am Event Hours: Sat: 9am-5pm Clean-Up: Sat: 5pm-6pm
Sun: 9-10am Sun: 10am-4pm Sun: 4pm-6pm

Please circle the expected number of people in attendance:

1-50	50-100	100-250	250-500	<u>500-1000</u>	1000-2000	2000-4000	Other _____
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Please circle the recreational facility/facilities you will be utilizing:

City Center Circle Specify Section: <u>City Hall Plaza</u>	Riverwalk Park Specify section: 1A North 1B South Both
Kenneth W. Parker Amphitheater Specify road closure: 1/4 None	Other recreational facility Specify: _____

SECTION 3: EVENT DETAILS

Please answer the following questions regarding your event:

Is the event open to the public?	☒ YES	☐ NO	
Will the event be promoted/advertised?	☒ YES	☐ NO	If yes, please describe all methods _____
Will admission (tickets, donations, solicitations, ect) be charged for the event?	☐ YES	☒ NO	If yes, detail cost per person and revenue sources _____
Does your event have vendors selling or distributing food, beverages, services, ect?	☒ YES	☐ NO	If yes, who and what will be sold? <u>Arts & Crafts</u>
Will you be catering the event?	☐ YES	☒ NO	If yes, who will be catering? _____
Is alcohol being requested at the event?	☐ YES	☒ NO	If yes, an additional alcohol application is required to be filled out and approved by the Special Event Alcohol Committee.

The following activities/uses may require a permit, fee and/or additional documentation. Please check all that apply.

- | | | | |
|-------------------|---------------------------|---|----------------------------------|
| - Amplified sound | - Amusement Rides | - Street, lane, sidewalk closure | - Live or recorded music |
| - Stages | - Additional power source | ☒ Tents/banners/signs | - Commercial filming/photography |
| - Parade | - Parachutes | ☒ Inflatable devices | - Fireworks/pyrotechnics |
| - Aircraft | - Watercraft | - Portable restrooms | - Live animals |

If you checked any of the above items, please provide a complete description of the activity or need.

Vendors will need to use pop-up tents with their signage displayed.

The Kid Zone will feature free crafts, games, and one or two inflatables [waivers to be signed prior to participation].

SECTION 4: ASSUMPTION OF RISK, WAIVER OF LIABILITY, HOLD HARMLESS, AND INSURANCE AGREEMENT

The contractor, vendor, or user, hereby promises and agrees to indemnify and save harmless the City of Port Orange, a municipal corporation, its officers, agents, and employees from and against any and all liability claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions, including attorney's fees, for trial and on appeal of any kind and nature arising or growing out of, or in any way connected with the performance of the agreement whether by act or omission of the contractor, vendor, officers, agents, servants, employees, or others, or because of, or due to the mere existence of the agreement between parties.

By signing this Agreement, I voluntarily agree to assume all the foregoing risks and accept sole responsibility for any injury to myself including, but not limited to, personal injury, disability, and death, illness, damage, loss, claim, liability, or expense, of any kind, that I may experience or incur in connection participation in this program. On my behalf, I hereby release, covenant not to sue, discharge, and hold harmless City of Port Orange, its employees, agents, volunteers, and representatives, of and from all claims, including all liabilities, actions, damages, costs, or expenses of any kind arising out of or relating there to. I understand and agree that this release includes any claims based on the actions, omissions, or negligence of City of Port Orange, its employees, agents, volunteers, and representatives. I also understand by not signing this release, I will not be able to rent a facility or participate in a program.

Notwithstanding the foregoing, if the Licensee is the State or one of its agencies or subdivisions (including other cities or counties), as defined by s. 768.28, F.S., nothing contained in this Agreement shall be construed to require the Licensee to indemnify or insure the City for the City's own negligence or to assume any liability for the City's negligence. Notwithstanding anything set forth in any section of this application to the contrary, nothing in this application shall be deemed as a waiver of the Licensee's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the Licensee for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort.

COPYRIGHT LAW: Licensee assumes all costs arising from the use of patented, trademarked, or copyrighted materials, equipment, devices, processes, or dramatic rights used on, or incorporated in the conduct of any event covered under the agreement; and licensee agrees to Indemnify and hold harmless the City, from all damages, costs and expenses in law or equity for, or on account of, any patented, trademarked or copyrighted materials, equipment, devices, processes, or dramatic rights furnished or used by licensee in connection with this agreement and will defend the City from any such suit, or action, regardless of whether it be groundless, or fraudulent.

At the discretion of City officials, the licensee shall supply a "Certificate of Liability Insurance" reflecting minimum coverage of \$1,000,000 (one million dollars) per occurrence. The City of Port Orange shall be named as an additional insured, which shall be noted on the certificate. The certificate shall indicate that the applicant's insurance policy shall not be cancelable without thirty days prior written notice to the City. The undersigned agrees to abide by the regulations governing the said facility and is responsible for charges incurred and must supply a "Certificate of Insurance" to the Department of Recreation no later than thirty (30) calendar days prior to program/event date.

Licensee Signature: _____

Date: 8/1/24

SECTION 5: RULES AND REGULATIONS

Applications & Deposits

1. Applications must be received at least 30 days prior to the event.
2. 5k (race) applications must be received at least 60 days prior to the event.
3. A reservation deposit of 50% of the total rental cost, up to \$100.00 is due when the application is submitted and will be credited to the rental invoice.

Cancellations & Refunds

1. All cancellations must be received in writing.
2. To receive a full refund of any payment remitted to the City of Port Orange, including the reservation deposit, written notification must be received within 30 days of rental.

Payments

100% of fees must be paid 14 days prior to the rental date.

Licensee Initials: _____

Special Event Facilities Guidelines

1. All events and functions must file a permit with the City of Port Orange (hereafter "the City") Parks and Recreation Department. Sub-leasing is prohibited.
2. The City prohibits gate admission being charged to the public on the City property without the express written consent of the City Manager, or his designee.
3. If additional staging is added to the present stage, a \$1,000.00 bond (cash) must be posted before construction.
4. No heavy equipment or props will be brought onto event site, or seating area without the expressed written consent of the City.
5. Licensees are responsible for the cleanup of the City facility/property and may be charged for excessive cleanup incurred by the Parks and Recreation Department once the licensee has vacated the premises. Facility/property must be left in the same condition, as when rented; if not, the damage/clean-up costs will be charged back to the applicant.
6. The licensee agrees to remove any equipment, decorations, props, etc. at the termination of their permit. The licensee agrees to pay any costs associated with the storage, moving or disposal of such items and holds harmless the City for any damage, which may occur during the moving or storage of items.
7. Permanent attachment of props or decorations by using screws, nails etc. is prohibited on City property.
8. Licensees are responsible for any damage obtained as a direct result of the licensee's guests, activities etc.
9. Alcoholic beverages are prohibited in all the City parks and facilities without the express written consent of the City Manager, or his designee. Any event that is requesting alcohol at their event must fill out an alcohol application that must be approved by the Special Event Alcohol Committee.
10. Profanity or unacceptable behavior by performers, licensee, or their guests will not be tolerated. If Parks and Recreation personnel deem behavior and/or performances unacceptable, they have the right to revoke all permits, present and future, for this facility and terminate any and all activities.
11. The City holds the right to cancel, or terminate any permit if they feel that the public's safety is in jeopardy.
12. It is the licensee's responsibility to hire and pay for any required City Services or equipment such as, but not limited to, Police, Fire, Parks, Public Works etc., unless written consent has been granted by the City Manager, City Council or their designees.
13. Amplified sound is not permissible during the times of 10pm-7am as deemed by the City noise ordinance without the express written consent of the City Manager, or his designee.

Licensee Initials: CJV

As a representative of the event, I do hereby accept that I have read and agree to all of the provided rules, regulations and guidelines for facility rentals as put forth by the City of Port Orange.

Licensee Signature: CJV

Print Name: CAMERON VINTSON

Date: 8/1/24

SECTION 6: LICENSEE ACKNOWLEDGEMENT

You are required to sign and date your agreement. Falsification of information may result in rejection of the agreement, or cancellation of the event by the City of Port Orange.

Licensee Signature: CJV

Date: 8/1/24

The program/event will be terminated should it create or cause any violation of Local, State, Federal laws or ordinances.

THE PARKS AND RECREATION DEPARTMENT IS NOT AUTHORIZED TO WAIVE FEES WITHOUT
THE EXPRESSED WRITTEN CONSENT OF THE CITY'S CHIEF ADMINISTRATIVE OFFICER.



**CITY OF PORT ORANGE
SPECIAL EVENT FACILITIES**

1395 Dunlawton Ave
Port Orange, FL 32127
Phone: 386-506-5851
Fax: 386-756-5351

**IT STARTS IN
PARKS**
Coaching. Connecting. Community.

RENTAL RATES & FEES

SPECIAL EVENT FACILITIES

Facility	Per Hour Rental Rate
Kenneth W. Parker Amphitheater	\$120.00
City Center Circle (per section)	\$60.00
Riverwalk Park (per section)	\$60.00

ADDITIONAL SPECIAL EVENT FEES

City Services	Fee
Electrical Fee for Power Pedestals	\$50.00/each
Trash Cans	\$2.00/each
Barricades	\$2.00/each
Cones	\$1.00/each
Police Services (per Officer)	\$62.00/hr
Police Services on a City Holiday	\$72.00/hr
Parks, Public Works, or Public Utilities Services	\$35.00/hr
Part-Time Recreation Staff (per employee)	\$20.00/hr
Water Hook Up	\$25.00
Reservation Deposit	50% up to \$100
Alcohol Fee	\$100.00
Electronic sign board	\$65.00 per day

ITEM		TIMES	QTY	UNIT	RATES	TOTAL	WAIVER APPLIED	TAX
Police (Parade)	No	10:00AM-1:00PM	6	Hours	\$ 62.00	\$ 372.00	\$ 93.00	
Police (ONS)	No	6:00PM-6:00AM	12	Hours	\$ 62.00	\$ 744.00	\$ 186.00	
						Police Total (w/tax)		\$ 1,116.00
						Fee Waiver %		75%
						Balance Due		\$ 279.00

RESOLUTION NO. 19-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA;
ESTABLISHING THE PARKS AND RECREATION
DEPARTMENT SPECIAL EVENT FEE REDUCTION
MATRIX POLICY; PROVIDING FOR REPEAL OF
CONFLICTING RESOLUTIONS; PROVIDING FOR
SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes the need to fairly and uniformly apply the fees for use of City property for special events; and

WHEREAS, in certain circumstances, special events add value to the community at-large, and warrant a reduction in fees; and

WHEREAS, the Parks and Recreation Department has developed a special event fee reduction matrix capable of being fairly and uniformly applied upon request; and

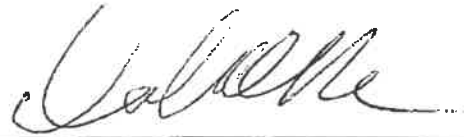
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Port Orange Parks and Recreation Special Event and Associated Fee Reduction Matrix Policy attached hereto as Exhibit "A" to this Resolution is hereby adopted.

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.

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 adoption.



MAYOR DONALD O. BURNETTE

ATTEST:



Robin L. Fenwick, MMC, City Clerk

Adopted on the 15 day of October, 2019.

Reviewed and Approved:

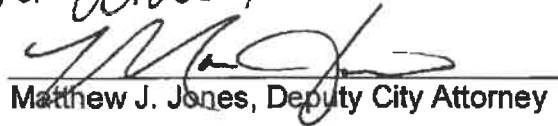

Matthew J. Jones, Deputy City Attorney

EXHIBIT "A"

Port Orange Parks and Recreation Special Event and Associated Fee Reduction Matrix Policy

APPLICABILITY

The Port Orange Parks and Recreation Special Event and Associated Fee Reduction Matrix (the "Matrix") is applicable to fees related to special events held on public property upon request by the event planner.

The Matrix is applied to the special event fee, rental fee, and other fees listed in the Parks and Recreation fee resolution related to special events held on City property.

AUTHORITY

The Parks and Recreation Director or Designee shall determine whether a special event qualifies for a fee reduction based on the parameters set forth herein and may approve fee reductions (using the Matrix) of up to \$3,500. Fee reductions (using the Matrix) in excess of \$3,500, but not to exceed \$25,000 shall require approval by the City Manager. Fee reductions in excess of \$25,000 shall require City Council approval.

ELIGIBILITY FACTORS

The following factors will be considered to determine the amount of fee reduction:

- Proceeds from the event benefit a non-profit organization, government entity or public educational institution
- An event that is open to the public without requiring any membership or affiliation with the sponsoring group (whether religious, social or otherwise)
- The event offers free admission to all attendees
- The event is aimed at promoting and facilitating physical, social or cultural activities for the community
- The event sponsor is a local business, person or entity

MATRIX

The Parks and Recreation Director shall establish and utilize a Matrix spreadsheet capable of being applied fairly and uniformly to each request for a fee reduction based on the eligibility factors. The maximum fee reduction available using the Matrix shall be 75% of the fees eligible to be reduced.



**ARTHAUS
ARTS FESTIVAL
SITE MAP**

**SAT/SUN
10.17 - 10.18**



**ARTHAUS
MAIN TENT/
EVENT CHECK IN**



**CHALK ART
COMPETITION**



KID ZONE



**VENDOR
TENTS**



FOOD TRUCKS



**SATURDAY
PARADE ROUTE
11:30AM-1:30PM**


TRAFFIC BARRIER /POPD


**PARADE ROUTE/
CLOSED ROAD**


PARADE START


PARADE END


PARADE STAGING


AWARD STAGE



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 9/15/2026

SUBJECT: (F19) Second Reading - Ordinance No. 2026-9 - LDC Amendment Initiated by the Lamar Company L.L.C./Chapter 15 Billboards (DCAM-26-0002)

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2026-9.

SUMMARY: Planning Commission Recommendation (6-25-26): Recommended Approval 3-2

This agenda item is a Land Development Code (LDC) amendment initiated by Lamar Company L.L.C. (Lamar Outdoor Advertising) to make changes to Chapter 15 of the City's LDC relating to billboards. According to Lamar, the proposed text amendment is intended to modify the dimensional requirements for digital sign faces applicable to reconstructed billboards, specifically the allowable height of the billboard structure and the size of the digital sign face.

In 2025, Lamar requested a text amendment to Chapter 15 of the Land Development Code (LDC) that established a process for replacing existing static billboard sign faces with digital (LED) sign faces. The amendment also established additional standards and requirements specifically applicable to the reconstruction of billboard sign faces as digital (LED) sign faces, in addition to the other applicable regulations for digital signs contained in Chapter 15 of the LDC.

The 2025 amendment was initiated by Lamar to modernize select existing billboard locations while reducing the overall number of billboard sign faces in the city. The 2025 amendment established criteria for billboard reconstruction along Ridgewood Avenue and I-95 and required the removal of at least two (2) existing static billboard sign faces within the City for each reconstructed digital sign face. The 2025 amendment also requires a Billboard Relocation and Reconstruction Agreement for each reconstruction project. The agreement identifies the existing static billboard sign faces to be removed and the location where the replacement digital sign face will be constructed. The agreement also establishes the specific terms and conditions for the relocation and reconstruction of the billboard based on the requirements of the LDC and requires City Council approval.

According to Lamar, the proposed amendment is intended to clarify existing standards and enable the constructability of proposed digital sign face replacements. During the

review of permit applications for two (2) proposed billboard reconstruction projects, the applicant determined that the current standards adopted in 2025 limited the design of the replacement billboards and digital sign faces. Therefore, Lamar is requesting amendments to Chapter 15, Sections 14 and 16 of the LDC, as follows:

1. Height Standard: The current LDC limits the height of a reconstructed billboard to the height of the existing billboard being removed from the same property. The applicant proposes revising this standard to allow a reconstructed billboard to be no taller than the height of the existing billboard or 30 feet, whichever is greater. This would establish a minimum allowable height of 30 feet for reconstructed billboards, regardless of the height of the existing billboard being removed.

The applicant states that, at lower heights, maintenance of a digital sign face would require a “shepherd’s hook” anchorage device, which could potentially damage the digital sign face and is inconsistent with Lamar’s preferred maintenance practices. Lamar further states that the requested modification would allow the maintenance platforms (catwalks) to be positioned to provide adequate clearance above ground level, improving worker safety and eliminating the need for equipment that could potentially damage the digital sign face. According to Lamar, the requested modification is intended to establish a minimum height of 30 feet above ground level (HAGL) to facilitate the safe installation, maintenance, and servicing of the billboard structure.

2. Digital Sign Face Area: The current LDC limits the size of a reconstructed digital sign face to the square footage of the largest single static sign face removed as part of the approved sign face exchange. Lamar is requesting to revise this requirement to allow the size of the reconstructed digital sign face to be based on the combined area of all static sign faces removed from the same property that are oriented in the same direction, subject to a maximum digital sign face area of 380 square feet.

For example, under the current LDC requirement, if two (2) static sign faces on the same structure are oriented in the same direction and each measures 246 square feet, the maximum allowable reconstructed digital sign face would be 246 square feet because the current standard is based on the largest individual static sign face removed. Under the proposed amendment, the combined area of the two removed sign faces would be 492 square feet or a maximum allowable digital sign face of 380 square feet, whichever is less.

Lamar states that approximately 380 square feet is the minimum LED display size readily available from its manufacturer. As a result, the applicant indicates that the current standard limits reconstruction at certain locations to approximately 246 square feet, which is not sufficient to accommodate the available LED display technology.



Example of a structure with more than one sign oriented in the same direction with a sign area of 246 square feet for each sign face.



Example of a billboard structure with one digital sign face on each side, where the proposed digital sign face area exceeds the combined area of the two removed static sign faces (246 square feet each) but does not exceed the maximum allowable digital sign face area of 380 square feet.

3. Removal Requirement: The current LDC requires the structure and sign faces to be removed prior to issuance of a building permit for a reconstructed billboard. Lamar is requesting that this requirement be revised to allow the demolition permit for the existing structure and sign faces, and the building permit for the reconstructed structure and digital sign face, to be issued at the same time. According to Lamar, the proposed change is intended to allow the demolition and new construction permits to be processed and issued concurrently. This request is consistent with the City's permitting for other demolition and redevelopment projects, such as demolishing an existing home and constructing a new home on the same property.

If the proposed LDC amendments are approved, Lamar intends to request City Council approval for an amendment to the approved 2025 Billboard Relocation and Reconstruction Agreement to amend the following reconstruction projects:

1. Ridgewood Avenue/Nova Road: Removal of a 34.5-foot-tall billboard structure with

four (4) static sign faces, each measuring 246 square feet, located north of the intersection of Ridgewood Avenue and Nova Road. The applicant proposes to reconstruct a digital billboard at the same location, maintaining the existing 34.5-foot height, with two (2) digital sign faces, each measuring 378 square feet.



Photo of sign to be rebuilt with one sign face per side with a sign area of 378 square feet

2. I-95/Williamson Boulevard: Removal of a 25-foot-tall billboard structure with a 464-square-foot static sign face located along the I-95 southbound on-ramp near the Dunlawton Avenue/Taylor Road interchange (5889 Williamson Boulevard), and removal of a 23-foot-tall billboard structure with a 527-square-foot static sign face located along northbound I-95 south of the Williamson Boulevard overpass (4901 Williamson Boulevard). The applicant proposes to reconstruct a 30-foot-tall digital billboard at the I-95 southbound location with a 464-square-foot digital sign face.



Concept Photo of a 30-foot-tall digital billboard at the I-95 southbound location.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2026-9	Ordinance No. 2026-9.doc
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2.	Staff Report - Chapter 15 Text Amendment-6-18-26	Staff Report - Chapter 15 Text Amendment-6-18-26 .pdf
3.	Business Impact Estimate - DCAM-26- 0002 - ORD 2026-9 (1)	Business Impact Estimate - DCAM-26- 0002 - ORD 2026-9 (1).docx

Amanda Bonin

Created/Initiated - 09/02/2026

ORDINANCE NO. 2026-9

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING THE LAND
DEVELOPMENT CODE CHAPTER 15 RELATING TO
NONCONFORMING SIGNS TO CLARIFY THE EXISTING
STANDARDS FOR HEIGHT AND DIGITAL SIGN FACE
AREA FOR PROPOSED DIGITAL SIGN FACE
REPLACEMENTS; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed amendment has been requested by applicant for the purpose of modifying the dimensional requirements for digital sign faces for reconstructed billboards, specifically the allowable height of the billboard structure and the size of the digital sign face; 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 15, Section 14 of the Land Development Code, to read as follows:

Chapter 15 – SIGNS

Section [14]: Nonconforming signs.

(a- e) Unchanged.

(f) In an effort to reduce the number of nonconforming signs located within the city that have a sign face greater than 200 square feet, an existing nonconforming sign with a sign face greater than 200 square feet may be reconstructed pursuant to the authority set forth in F.S. § 70.20, provided that the number of reconstructed sign faces result in a net reduction in the number of sign faces greater than 200 square feet within the city and the reconstruction agreement complies with all of the requirements set forth as follows:

- (1) Only an existing nonconforming sign with a sign face greater than 200 square-feet located along Ridgewood Avenue or the I-95 corridor can be reconstructed with a new sign face. A new sign face may be reconstructed on a new sign structure in exchange for the removal of at least two (2) sign faces located within the city so long as each sign face to be removed is greater than 200 square-feet. The reconstruction of a nonconforming sign with a new sign face (s) may be in the same location as the removed nonconforming sign and sign face(s). This exchange shall comply with all of the requirements set forth as follows:
 - (a) The reconstructed nonconforming sign structure and sign face(s) shall either be (1) reconstructed in generally the same location, on the same property where the existing nonconforming sign structure and sign face(s) is located; or (2) reconstructed in generally the same location, on the same property as an existing nonconforming sign and sign face(s) located along I-95 that is to be removed in the course of reconstruction.
 - (b) A reconstructed sign can only be located on property that abuts Ridgewood Avenue or the I-95 right-of-way, or is within the I-95 right-of-way. A reconstructed sign cannot be located on property within a residential zoning district.
 - (c) The sign owner shall submit a proposed reconstruction agreement to reconstruct a sign for the city for review.
 - (d) City Council shall determine whether to approve or deny the proposed reconstruction agreement submitted in accordance with this section; The reconstructed sign shall continue to be a nonconforming sign.
 - (e) As part of the exchange, the sign face for a reconstructed sign shall not exceed the total combined sign area of the sign face(s) removed in the same facing direction from the same property and location, or shall not exceed three hundred and eighty (380) square feet of sign area, whichever is less square footage of the largest sign face removed as part of the exchange.
 - (f) Structural components surrounding the reconstructed sign face shall not exceed a size of ten percent of the sign face.
 - (g) The reconstructed sign may have a sign face with a change copy, and if electronic or digital, the frequency of copy change shall not be less than eight-second intervals, and the maximum transition time between messages shall not exceed one second.

- (h) If electronic or digital, the reconstructed sign face, shall provide a high-resolution picture quality with pixel spacing of 20 millimeters or less. Messages shall not display any illumination that moves, appears to move, flashes, scrolls, or changes in intensity during the static display period, but static graphic pictures may be displayed with no limitations on color. Messages shall not operate at a brightness level of more than 5,000 foot-candles during the day and 500 foot-candles from dusk to dawn. Each digital sign shall have a light-sensing device to adjust the brightness of the sign face as ambient light conditions change. A malfunctioning sign face must be turned off or display a blank screen. Sign shall display emergency announcements or alerts, including, but not limited to Amber Alerts, Silver Alerts, and Evacuation Alerts on the sign at no charge on an as-needed basis as determined by the City.
 - (i) The tallest portion of the reconstructed sign, including appurtenances, shall not exceed the current height of the sign on the same property and same location as the sign being removed or 30 feet, whichever is greater in height.
 - (j) All new utilities to the reconstructed sign shall be undergrounded.
 - (k) The non-conforming sign and its sign face(s) being removed as part of the exchange shall be removed prior to or as a condition of the issuance of the building permit to reconstruct a non-conforming sign and its sign face(s), subject to an approved reconstruction agreement.
- (g) The casual, temporary, or illegal use of any sign shall not be sufficient to establish the existence of a nonconforming use or to create any rights in the continuance of such use.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. 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 4. 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 re-numbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. This Ordinance shall 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-26-0002

LDC TEXT AMENDMENT / CHAPTER 15

REQUEST:	Amend Chapter 15 of the Land Development Code (LDC) to revise the standards for reconstructed billboard signs by allowing a height of 30 feet or the height of the existing sign being removed, whichever is greater; revising the allowable sign face area calculation to be based on the total combined sign area of all sign faces removed in the same directional orientation on an existing sign; clarifying the timing of when billboard demolition or removal is required to occur; and establishing an administrative variance process for billboard height standards to allow limited administrative approval of height modifications.
APPLICANT:	Lamar Outdoor Advertising
STAFF CONTACT:	Tim Burman, Community Development Director (386) 506-5675
STAFF RECOMMENDATION:	Approval, subject to direction from the Planning Commission and City Council regarding the proposed text changes requested by the applicant related to sign face area and overall height for billboard structures.
PLANNING COMMISSION DATE:	June 25, 2026

Background:

In 2025, the City Council approved a text amendment to Chapter 15 of the Land Development Code (LDC) allowing a billboard owner to request approval of a Billboard Relocation and Reconstruction Agreement to replace existing static sign faces with digital sign faces. The intent of the amendment was to modernize select existing billboard locations while reducing the overall number of billboard sign faces within the city and improving the visual appearance of major transportation corridors. The 2025 text amendment established criteria for digital sign face reconstruction at existing billboard locations along Ridgewood Avenue and I-95 and required the removal of at least two existing static billboard sign faces within Port Orange for each reconstructed digital sign face.

The current request is an applicant-initiated text amendment seeking to modify two dimensional standards previously adopted as part of the 2025 text amendment relating to allowable height and sign face area for reconstructed billboards with LED sign faces.

The applicant states the proposed amendments are intended to clarify allowable dimensional standards applicable to reconstructed signs.

According to the applicant, following approval of the 2025 text amendment and during the subsequent permit review process for the reconstruction of two (2) billboards with LED sign faces, it was determined that the adopted dimensional standards may limit the constructability of the proposed billboard structures as designed. The applicant states that modifications to the allowable height and sign face area (Exhibit A).

Height: The applicant indicates that employee safety is the primary reason for the requested amendment. According to the applicant, Lamar has implemented enhanced safety standards for digital billboard structures that now require a front catwalk regardless of sign type or height. Historically, Lamar did not require a front catwalk for digital billboards; however, the applicant states that the additional platform provides a safer working environment for employees performing maintenance and repair activities. Employees are also required to utilize safety harnesses and other fall-protection equipment while working on the structures.

The applicant further states that one of the existing billboards proposed for replacement is approximately 25 feet in height. Under the current code provisions, the reconstructed billboard would be limited to the same height as the structure being removed. According to the applicant, a digital billboard constructed at this height would require maintenance personnel to use a utilize safety harnesses with a “shepherd’s hook” anchorage device to access the sign face. The applicant states that how the “shepherd’s hook” anchorage device is used and attached to the sign could damage the digital sign face equipment.

To avoid potential damage to the digital sign face and to accommodate Lamar’s safety protocols, the requested amendment by the applicant would allow the height of the structure to be increased by an additional five (5) feet. The applicant states that this additional height would allow the front catwalk to be positioned sufficiently above ground level to eliminate the need for a shepherd’s hook, while still allowing employees to perform maintenance activities using the applicant’s preferred safety procedures.

The applicant is requesting an increase in the maximum permitted height for the rebuilt sign in order to achieve a minimum distance between the bottom of the catwalk and the ground, to support worker safety during installation, maintenance, and servicing of the billboard structure and avoid the use of equipment that could damage the digital face. According to the applicant, increasing the height of the structure to 30 feet, will ensure that the front catwalk will be elevated to a height where Lamar’s safety standards no longer require the use of a shepherd’s hook and workers can instead rely on other approved fall-protection methods and anchorage systems that will not damage the digital sign face.

Sign Area: The applicant also requests an increase in the allowable sign area based on the manufacturer’s specifications for constructing LED display sign faces. The applicant states that the smallest LED display face available from their manufacturer is approximately 380 square feet. Under the current Code, the maximum permitted sign area at one of the locations proposed for reconstruction

with LED display screens is approximately 246 square feet. As a result, the applicant indicates that an increase in allowable sign area to at least 380 square feet is necessary to accommodate the minimum LED display size available from their manufacturer.

CURRENT REGULATIONS IN THE LDC:

Under the City's current sign regulations, billboards are a prohibited sign type. Existing billboard structures are treated as legal nonconforming signs. Structural repair or reconstruction of nonconforming signs is generally not permitted, and such structures must typically be removed when they become structurally unsafe or obsolete.

In 2025, the City's adopted reconstruction framework established a limited exception to this prohibition by allowing select billboard locations to be reconstructed with digital sign faces in exchange for the removal of existing billboard sign faces within the City. The framework applies to existing nonconforming billboard structures and was intended to reduce the total number of billboard sign faces within the City while allowing reconstruction at select locations, subject to compliance with the LDC and approval of a Billboard Relocation and Reconstruction Agreement.

Under that framework, reconstructed signs were intended to generally not exceed the existing height or sign area of the billboard or sign faces being removed.

Other municipalities, including Daytona Beach, Orlando, and St. Petersburg, have adopted similar frameworks allowing conversion of existing billboard inventory to digital formats with varying regulatory controls, inventory reduction requirements, and design standards.

APPLICANT'S PROPOSED TEXT AMENDMENT

The applicant is requesting to amend Chapter 15, Sections 14 and 16 of the Land Development Code (LDC) as follows:

- 1. Height Standard:** The LDC currently states that the height of a reconstructed sign may not exceed the existing height of the sign being removed on the same property. The applicant is proposing to revise this requirement to allow the tallest portion of a reconstructed sign, including appurtenances, to not exceed the height of the existing sign being removed on the same property and location, or 30 feet, whichever is greater.

This proposed change would establish a minimum height threshold of 30 feet, allowing reconstructed signs to exceed the height of the existing structure when the existing billboard is below 30 feet.

- 2. Sign Face Area Standard:** The LDC currently provides that the sign face for a reconstructed sign shall not exceed the square footage of the largest sign face removed as part of the exchange.

The applicant is proposing to revise this requirement to provide that the sign face of a reconstructed sign shall not exceed the total combined sign area of the sign face(s) removed in the same directional orientation from the same property and

location as part of the exchange. Where two (2) sign faces on a single billboard structure are oriented in the same direction, the maximum permitted sign face area of the reconstructed sign shall not exceed three hundred eighty (380) square feet.

For example, under the current LDC standard, if a billboard owner removes two static sign faces facing the same direction measuring 246 square feet and 246 square feet, the maximum allowable reconstructed digital sign face would be limited to 246 square feet, as the current code bases allowable area on the largest single sign face removed. Under the proposed amendment, the allowable reconstructed sign face would instead be based on the total combined area of both sign faces, resulting in a maximum allowable sign face of 380 square feet.

According to the applicant, the proposed change would shift the standard from a “largest single sign face” limitation to a combined-area approach based on all sign faces removed in the same directional orientation.

- 3. Removal Requirement:** The LDC currently provides that the nonconforming sign and its sign face(s) must be removed prior to issuance of the building permit to reconstruct a nonconforming sign and its sign face(s). The applicant is proposing to revise this requirement to require that the nonconforming sign and its sign face(s) be removed prior to, or as a condition of, issuance of the building permit to reconstruct a nonconforming sign and its sign face(s).

This proposed change would clarify the timing of removal by requiring that demolition or removal occur before or concurrent with issuance of the reconstruction building permit, rather than solely as part of the overall reconstruction process.

- 4. Administrative Flexibility:** The applicant has proposed the addition of a new subsection to Section 16, which would establish an administrative variance process for the height requirements contained in Section 14 of this chapter. Under the applicant’s proposed language, the administrative official would be authorized to approve administrative variances from the height standards. All other variances would continue to be processed through the City’s standard variance procedures outlined in Chapter 19 of the Code.

If a height modification is included as part of an approved Billboard Relocation and Reconstruction Agreement, the administrative variance provision would not eliminate or supersede the requirement for City Council approval of any amendments to that agreement, and any such changes would still require City Council consideration and approval.

BILLBOARD INVENTORY AND PROPOSED RECONSTRUCTION

There are approximately 13 billboard structures and a total of 17 billboard sign faces within the City of Port Orange. The applicant owns approximately 6 billboard structures totaling 10 sign faces (Exhibit B).

According to the applicant, if the proposed text amendment is approved, it intends to request an amendment to its 2025 Billboard Relocation and Reconstruction Agreement for City Council consideration to allow the following actions:

1. Removal of a 34.5-foot-tall billboard structure containing four (4) static sign faces (246 square-feet each) located north of the intersection of Ridgewood Avenue and Nova Road, and reconstruction of a digital billboard at the same location at 34.5 feet in height with two 378 square-foot LED faces.
2. Removal of a 25-foot-tall billboard structure containing a 464 square-foot static sign face located along the I-95 southbound on-ramp near the Dunlawton Avenue / Taylor Road interchange (5889 Williamson Boulevard), and removal of a 23-foot-tall billboard structure containing a 527 square-foot static sign face located along northbound I-95 south of the Williamson Boulevard overpass bridge (4901 Williamson Boulevard). At the I-95 southbound location, the applicant proposes reconstruction of a billboard at a height of 30 feet with a maximum 464 square-foot LED sign face.

CONCLUSION:

The applicant's proposal would modify the dimensional standards (height and sign area) applicable to reconstructed digital billboard locations as adopted in the 2025 text amendment. The 2025 text amendment established a reconstruction framework for existing nonconforming billboard structures, with the intent of reducing the total number of billboard sign faces within the City while allowing reconstruction of select locations in a controlled manner. The 2025 amendment, as approved by City Council, was structured such that reconstructed signs would generally not exceed the existing height or sign area of the billboard being removed.

While the proposal maintains the exchange-based framework requiring removal of existing billboard sign faces in exchange for reconstruction of structures with LED sign faces and continues to achieve a net reduction in the total number of billboard sign faces, it would allow increased height and sign face area for structures compared to the prior structures at these locations and the standards adopted in 2025.

ATTACHMENTS:

1. Exhibit A – DRAFT Text Amendment Submitted by Applicant
2. Exhibit B – Billboard locations within Port Orange

Section [14]: Nonconforming signs.

(a- e) Unchanged

(f) In an effort to reduce the number of nonconforming signs located within the city that have a sign face greater than 200 square feet, an existing nonconforming sign with a sign face greater than 200 square feet may be reconstructed pursuant to the authority set forth in F.S. § 70.20, provided that the number of reconstructed sign faces result in a net reduction in the number of sign faces greater than 200 square feet within the city and the reconstruction agreement complies with all of the requirements set forth as follows:

- (1) Only an existing nonconforming sign with a sign face greater than 200 square-feet located along Ridgewood Avenue or the I-95 corridor can be reconstructed with a new sign face. A new sign face may be reconstructed on a new sign structure in exchange for the removal of at least two (2) sign faces located within the city so long as each sign face to be removed is greater than 200 square-feet. The reconstruction of a nonconforming sign with a new sign face (s) may be in the same location as the removed nonconforming sign and sign face(s). This exchange shall comply with all of the requirements set forth as follows:
 - (a) The reconstructed nonconforming sign structure and sign face(s) shall either be (1) reconstructed in generally the same location, on the same property where the existing nonconforming sign structure and sign face(s) is located; or (2) reconstructed in generally the same location, on the same property as an existing nonconforming sign and sign face(s) located along I-95 that is to be removed in the course of reconstruction.
 - (b) A reconstructed sign can only be located on property that abuts Ridgewood Avenue or the I-95 right-of-way, or is within the I-95 right-of-way. A reconstructed sign cannot be located on property within a residential zoning district.
 - (c) The sign owner shall submit a proposed reconstruction agreement to reconstruct a sign for the city for review.
 - (d) City Council shall determine whether to approve or deny the proposed reconstruction agreement submitted in accordance with this section; The reconstructed sign shall continue to be a nonconforming sign.
 - (e) The sign face for a reconstructed sign shall not exceed the total combined sign area of the sign(s) removed in the same facing direction from the same property and location as part of the exchange. Where two (2) sign faces are on a single billboard structure and oriented in the same direction, the maximum permitted sign face area of the reconstructed sign shall not exceed three hundred and eighty (380) square feet. ~~square footage of the largest sign face removed as part of the exchange.~~
 - (f) Structural components surrounding the reconstructed sign face shall not exceed a size of ten percent of the sign face.

- (g) The reconstructed sign may have a sign face with a change copy, and if electronic or digital, the frequency of copy change shall not be less than eight-second intervals, and the maximum transition time between messages shall not exceed one second.
 - (h) If electronic or digital, the reconstructed sign face, shall provide a high-resolution picture quality with pixel spacing of 20 millimeters or less. Messages shall not display any illumination that moves, appears to move, flashes, scrolls, or changes in intensity during the static display period, but static graphic pictures may be displayed with no limitations on color. Messages shall not operate at a brightness level of more than 5,000 foot-candles during the day and 500 foot-candles from dusk to dawn. Each digital sign shall have a light-sensing device to adjust the brightness of the sign face as ambient light conditions change. A malfunctioning sign face must be turned off or display a blank screen. Sign shall display emergency announcements or alerts, including, but not limited to Amber Alerts, Silver Alerts, and Evacuation Alerts on the sign at no charge on an as-needed basis as determined by the City.
 - (i) The tallest portion of the reconstructed sign, including appurtenances, shall not exceed the current height of the sign on the same property and same location as the sign being removed or 30 feet, whichever is greater in height.
 - (j) All new utilities to the reconstructed sign shall be undergrounded.
 - (k) The non-conforming sign and its sign face(s) being removed as part of the exchange shall be removed prior to or as a condition of the issuance of the building permit to reconstruct a non-conforming sign and its sign face(s), subject to an approved reconstruction agreement.
- (g) The casual, temporary, or illegal use of any sign shall not be sufficient to establish the existence of a nonconforming use or to create any rights in the continuance of such use.

Section [16]: Variances and appeals.

- (a) Appeals from technical decisions of the administrative official or any other official empowered to rule on sign issues shall be processed according to the procedures as outlined in [chapter 3](#) of this code.
- (b) Except as provided in subsection (c) below, V~~variances~~ variances from the requirements of this chapter shall be processed according to the provisions of [chapter 19](#) of this code.
- (c) The administrative official may grant administrative variances from the height requirements prescribed in section 14 of this chapter. Application for administrative variances shall be made on the appropriate form provided by the department for that purpose, and shall be accompanied by the appropriate review fee.

Exhibit B

Existing Billboard Locations with Port Orange





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. 2026-9: LDC TEXT AMENDMENT / CHAPTER 15 (Case No. DCAM-26-0002)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state 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):

Lamar Outdoor Advertising is requesting an amendment to the Land Development Code (LDC) to revise regulations applicable to reconstructed billboards. The proposed amendments would modify the dimensional requirements for digital sign faces, establish allowable height standards for billboard structures, & clarify the timing of permit issuance.

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 9/15/2026

SUBJECT: (F20) First Reading - Ordinance No. 2026-10 - MDA Amendment/Robinson PCD 5th Amendment (Case No. PRZA-26-0001)

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2026-10.

SUMMARY: PLANNING COMMISSION ACTION (August 27, 2026): Recommended Approval 4-0

The subject property is located at 4900 Clyde Morris Boulevard, at the northwest corner of Clyde Morris Boulevard and Dunlawton Avenue, and is part of the Robinson Planned Commercial Development (PCD), which was approved by the Port Orange City Council in 1987. The Robinson PCD established the permitted uses and building dimensional requirements applicable to the development of the subject property. The subject property was developed as a bank in 1989 and operated as a bank for approximately 37 years. The site has been vacant for approximately five years.



Location map of 4900 Clyde Morris Boulevard

According to the property owner/applicant, the requested changes to the Master Development Agreement (MDA) for the Robinson PCD would allow the existing bank drive-thru canopy to be enclosed and converted into additional office space, which would be incorporated into the existing building. If approved, the vacant bank building would be redeveloped as a dental office for White Wolf Dental. The proposed redevelopment of the building and site would include interior and exterior renovations to the existing building, enclosure of the existing drive-thru canopy, and installation of new landscaping throughout the site.

The property owner/applicant requests the following amendments to the MDA for the Robinson PCD based on the redevelopment plan for the building and site:

1. To reduce the internal side yard setback from 15 feet to 10 feet. The requested 10-foot side yard building setback is consistent with the current standard side yard building setback requirements in the Land Development Code (LDC) for

comparable City zoning districts that allow office and institutional uses, such as Professional Office, Neighborhood Commercial, Office/Residential Transition, and Government/Public Use. The requested 10-foot side-yard building setback is consistent with current side-yard building setback requirements in other non-residential zoning districts that support office uses.

2. To remove the 75-foot building separation requirement and allow the building separation to be as required by the Florida Building Code (FBC) and National Fire Protection Association (NFPA). Current City dimensional standards for commercial and office zoning districts in Chapter 17 of the LDC do not establish a specific building separation requirement; instead, building separation is determined based on required setbacks and compliance with the FBC and NFPA standards. Consistent with the City's current development review process, building separation is evaluated based on compliance with applicable FBC and NFPA requirements rather than on a city-established building separation standard. The proposed amendment would remove the building separation requirement from the MDA and allow the lot to be redeveloped in a manner consistent with the applicable FBC and NFPA requirements, as well as the side setbacks established for the subject and adjacent properties. If the MDA amendment is approved, the side yard building setback for the property at 4900 Clyde Morris Boulevard would be reduced to 10 feet. The adjacent property to the south has a required minimum side-yard building setback of 15 feet, with an actual setback of approximately 26 feet. Therefore, the separation between the building on the adjacent property to the south of the subject property and the enclosed bank canopy would be 36 feet, which exceeds the applicable building separation requirements under the FBC and NFPA standards, which require a separation of greater than 10 feet.



Picture of the existing building at 4900 Clyde Morris Boulevard shows the canopy area to be enclosed and the adjacent office to the south, with the proposed building separation labeled.

The staff report is attached for more detail.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2026-10 with exhibit	Ordinance No. 2026-10 with exhibit.pdf
2.	Robinson PCD Fifth Amendment Agreement	Robinson PCD Fifth Amendment Agreement.pdf
3.	STAFF REPORT - PRZA-26-0001	STAFF REPORT - PRZA-26-0001.pdf
4.	Business Impact Estimate - PRZA-26-0001 - ORD 2026-10	Business Impact Estimate - PRZA-26-0001 - ORD 2026-10.docx

Penelope Cruz
Tim Burman
Shannon Balmer
Wayne Clark

Created/Initiated - 08/28/2026
Approved - 08/28/2026
Approved - 09/03/2026
Final Approval - 09/04/2026

ORDINANCE NO. 2026-10

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIFTH AMENDMENT TO THE ROBINSON PLANNED COMMERCIAL DEVELOPMENT (PCD) DEVELOPMENT AGREEMENT TO REDUCE THE INTERNAL SIDE YARD BUILDING SETBACK AND REMOVE THE 75-FOOT BUILDING SEPARATION REQUIREMENT AND ALLOW BUILDING SEPARATION TO BE DETERMINED BY THE FLORIDA BUILDING CODE (FBC) AND NATIONAL FIRE PROTECTION ASSOCIATION (NFPA); PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the Fifth Amendment to the Robinson Planned Commercial Development (PCD) Development Agreement for the (hereinafter referred to as the "Fifth Amendment"); and

WHEREAS, the Owner submitted a request to the Planning Commission to approve the Fifth Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended approval of the proposed Fifth Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the Fifth Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby approve the Fifth Amendment (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said Fifth Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2026

Passed and adopted on second and final reading on the day of _____, 2026

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

Exhibit 1

FIFTH AMENDMENT TO ROBINSON PLANNED COMMERCIAL DEVELOPMENT (PCD) DEVELOPMENT AGREEMENT

This agreement, by and between the City of Port Orange, of Port Orange, a Florida municipal corporation (hereinafter referred to as the "City"), and AJPO25, LLC. (hereinafter the "Developer"), constitutes the Fifth Amendment to a development agreement styled "Development Agreement Robinson PCD", recorded in Official Records Book 3038, Pages 1905-1911, Public Records of Volusia County, Florida.

WHEREAS, the above-described development agreement has previously been amended by the First Amendment to Robinson Planned Commercial Development (PCD) Development Agreement, recorded in Official Records Book 3067, Page 0027, Public Records of Volusia County, Florida; the Second Amendment to Robinson PCD Development Agreement, recorded in Official Records Book 3806, Pages 4285 through 4286, Public Records of Volusia County, Florida; and the Third Amendment to Robinson PCD Development Agreement, recorded at Official Records Book 3843, Pages 2222 through 2224, Public Records of Volusia County, Florida; and the Fourth Amendment to Robinson PCD Development Agreement, recorded at Official Records Book 4433, Pages 1406 through 1410, Public Records of Volusia County, Florida (hereinafter the above-described development agreement, as previously amended, shall be referred to as the "Development Agreement"); and

WHEREAS, the Developer is the owner of lots 19, 20, and 21 within the Robinson P.C.D., as more particularly described in Exhibit "A", attached hereto and by reference made a part hereof, hereinafter referred to as the "Subject Property", which is the only property impacted by this Fifth Amendment; and

WHEREAS, Developer's plans for development of the Subject Property requires modification of the terms and provisions of the Development Agreement as they pertain to dimensional requirements; and

WHEREAS, this Fifth Amendment is intended to further amend the Development Agreement and to be the controlling document applicable to terms or requirements stated herein as it applies to the Subject Property, the only property subject to this Fifth Amendment.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE CITY AND THE DEVELOPER THAT THE DEVELOPMENT AGREEMENT SHALL BE GOVERNED BY THE TERMS AND PROVISIONS OF THIS AMENDMENT:

1. The premises of this Fifth Amendment are agreed by the parties to be true and correct. The premises are incorporated herein and comprise a material part of this Fifth Amendment.

2. The Development Agreement, in relation to the Subject Property only, shall be amended to read as follow:

A. Paragraph 2a) of Exhibit "C" to the Development Agreement is hereby amended to remove the Minimum Distance between Principal Buildings requirement.

B. Paragraph 2a) of Exhibit "C" to the Development Agreement is hereby amended to reflect that the minimum building side yard setback is reduced to ten (10') feet instead of fifteen (15') feet as presently required.

3. This Fifth Amendment may only be amended or superseded in writing, upon mutual consent of the parties. The City and Developer have the authority to enter this Fifth Amendment which modifies and supersedes the terms and provisions of Development Agreement as applied to the Subject Property.

4. Development of the Subject Property shall be governed by the Development Agreement, this Fifth Amendment, and applicable City resolutions, regulations or ordinances. To the extent there is a conflict between the Development Agreement, this Fifth Amendment and any existing City resolution, regulation, or ordinance, this Fifth Amendment shall control. However, the Developer agrees to be bound by all other applicable City resolutions, regulations and ordinances which are not in conflict with or contrary to the terms of the Development Agreement or this Fifth Amendment.

5. This Fifth Amendment shall be recorded in the Public Records of Volusia County, Florida. The provisions of this Fifth Amendment shall constitute covenants running with the land. This Fifth Amendment shall inure to the benefit of the parties hereto and the Subject Property, and shall be binding upon any person, firm or corporation that may become a subsequent owner, successor or interest or assign, directly or indirectly, of the subject property or any portion thereof.

6. In the event of any claim, action, litigation or proceeding under this Fifth Amendment, venue shall be in Volusia County, Florida, and no other location, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

7. If any provision of this Fifth Amendment is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Fifth Amendment unless the holding so states.

8. The City shall have no right to administratively modify this Fifth Amendment.

IN WITNESS WHEREOF, the parties hereto attach their hands and seals on the dates set forth below.

WITNESSES:

CITY OF PORT ORANGE, a Florida
Municipal Corporation

By: _____

Scott Stiltner, Mayor

Printed Name: _____

Attest: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUISA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] this day of ____ 2026, by Scott Stiltner, Mayor, and Robin L. Fenwick, 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

WITNESSES:

DEVELOPER AJPO25, LLC, Florida limited liability company

Developer: _____

Adrian Abrahams, Manager

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA

COUNTY OF VOLUISA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this ____ day of ____ 2026, by Adrian Abrahams, Manager of AJPO25, LLC, Florida limited liability company, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

Printed, typed or stamped name, commission and expiration of commission term

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 19, 20, and 21, inclusive, Robinson PCD Subdivision, per plat thereof recorded in Map Book 42, Page 47, Public Records of Volusia County, Florida.

**FIFTH AMENDMENT TO
ROBINSON PLANNED COMMERCIAL DEVELOPMENT (PCD) DEVELOPMENT
AGREEMENT**

This agreement, by and between the City of Port Orange, of Port Orange, a Florida municipal corporation (hereinafter referred to as the "City"), and AJPO25, LLC. (hereinafter the "Developer"), constitutes the Fifth Amendment to a development agreement styled "Development Agreement Robinson PCD", recorded in Official Records Book 3038, Pages 1905-1911, Public Records of Volusia County, Florida.

WHEREAS, the above-described development agreement has previously been amended by the First Amendment to Robinson Planned Commercial Development (PCD) Development Agreement, recorded in Official Records Book 3067, Page 0027, Public Records of Volusia County, Florida; the Second Amendment to Robinson PCD Development Agreement, recorded in Official Records Book 3806, Pages 4285 through 4286, Public Records of Volusia County, Florida; and the Third Amendment to Robinson PCD Development Agreement, recorded at Official Records Book 3843, Pages 2222 through 2224, Public Records of Volusia County, Florida; and the Fourth Amendment to Robinson PCD Development Agreement, recorded at Official Records Book 4433, Pages 1406 through 1410, Public Records of Volusia County, Florida (hereinafter the above-described development agreement, as previously amended, shall be referred to as the "Development Agreement"); and

WHEREAS, the Developer is the owner of lots 19, 20, and 21 within the Robinson P.C.D., as more particularly described in Exhibit "A", attached hereto and by reference made a part hereof, hereinafter referred to as the "Subject Property", which is the only property impacted by this Fifth Amendment; and

WHEREAS, Developer's plans for development of the Subject Property requires modification of the terms and provisions of the Development Agreement as they pertain to dimensional requirements; and

WHEREAS, this Fifth Amendment is intended to further amend the Development Agreement and to be the controlling document applicable to terms or requirements stated herein as it applies to the Subject Property, the only property subject to this Fifth Amendment.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE CITY AND THE DEVELOPER THAT THE DEVELOPMENT AGREEMENT SHALL BE GOVERNED BY THE TERMS AND PROVISIONS OF THIS AMENDMENT:

1. The premises of this Fifth Amendment are agreed by the parties to be true and correct. The premises are incorporated herein and comprise a material part of this Fifth Amendment.

2. The Development Agreement, in relation to the Subject Property only, shall be amended to read as follow:

A. Paragraph 2a) of Exhibit "C" to the Development Agreement is hereby amended to remove the Minimum Distance between Principal Buildings requirement.

B. Paragraph 2a) of Exhibit "C" to the Development Agreement is hereby amended to reflect that the minimum building side yard setback is reduced to ten (10') feet instead of fifteen (15') feet as presently required.

3. This Fifth Amendment may only be amended or superseded in writing, upon mutual consent of the parties. The City and Developer have the authority to enter this Fifth Amendment which modifies and supersedes the terms and provisions of Development Agreement as applied to the Subject Property.

4. Development of the Subject Property shall be governed by the Development Agreement, this Fifth Amendment, and applicable City resolutions, regulations or ordinances. To the extent there is a conflict between the Development Agreement, this Fifth Amendment and any existing City resolution, regulation, or ordinance, this Fifth Amendment shall control. However, the Developer agrees to be bound by all other applicable City resolutions, regulations and ordinances which are not in conflict with or contrary to the terms of the Development Agreement or this Fifth Amendment.

5. This Fifth Amendment shall be recorded in the Public Records of Volusia County, Florida. The provisions of this Fifth Amendment shall constitute covenants running with the land. This Fifth Amendment shall inure to the benefit of the parties hereto and the Subject Property, and shall be binding upon any person, firm or corporation that may become a subsequent owner, successor or interest or assign, directly or indirectly, of the subject property or any portion thereof.

6. In the event of any claim, action, litigation or proceeding under this Fifth Amendment, venue shall be in Volusia County, Florida, and no other location, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

7. If any provision of this Fifth Amendment is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Fifth Amendment unless the holding so states.

8. The City shall have no right to administratively modify this Fifth Amendment.

IN WITNESS WHEREOF, the parties hereto attach their hands and seals on the dates set forth below.

WITNESSES:

CITY OF PORT ORANGE, a Florida
Municipal Corporation

By: _____

Scott Stiltner, Mayor

Printed Name: _____

Attest: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUISA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] this day of ____ 2026, by Scott Stiltner, Mayor, and Robin L. Fenwick, 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

WITNESSES:

DEVELOPER AJPO25, LLC, Florida limited liability company

Developer: _____

Adrian Abrahams, Manager

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA

COUNTY OF VOLUISA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this ____ day of ____ 2026, by Adrian Abrahams, Manager of AJPO25, LLC, Florida limited liability company, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

Printed, typed or stamped name, commission and expiration of commission term

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 19, 20, and 21, inclusive, Robinson PCD Subdivision, per plat thereof recorded in Map Book 42, Page 47, Public Records of Volusia County, Florida.



STAFF REPORT

Fifth Amendment to the Master Development Agreement for the Robinson Planned Commercial Development CASE NO. PRZA-26-0001

REQUEST:	To approve the Fifth Amendment to the Master Development Agreement for the Robinson Planned Commercial Development to reduce the internal side yard building setback from 15 feet to 10 feet and remove the 75-foot building separation requirement.
LOCATION:	4900 Clyde Morris Boulevard
APPLICANT	Adrian Abrahams, Manager of AJPO25, LLC
PROPERTY OWNER:	AJPO25, LLC
STAFF CONTACT:	Penelope Cruz, Planning Manager, 386-506-5671/pcruz@port-orange.org
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 4-0 (August 27, 2026)
CITY COUNCIL:	September 15, 2026

INTRODUCTION

The subject property is located at 4900 Clyde Morris Boulevard, at the northwest corner of Clyde Morris Boulevard and Dunlawton Avenue and is part of the Robinson Planned Commercial Development (PCD), which was approved by the Port Orange City Council in 1987. The subject property was developed as a bank in 1989 and operated as a bank for approximately 37 years. The site has been vacant for approximately five years. The property owner requests the proposed amendment to the Master Development Agreement (MDA) for the Robinson PCD to reduce the internal side yard setback from 15 feet to 10 feet and to remove the 75-foot building separation requirement and allow the building separation to be as required by the Florida Building Code (FBC) and National Fire Protection Association (NFPA).

Figure 1. Location Map

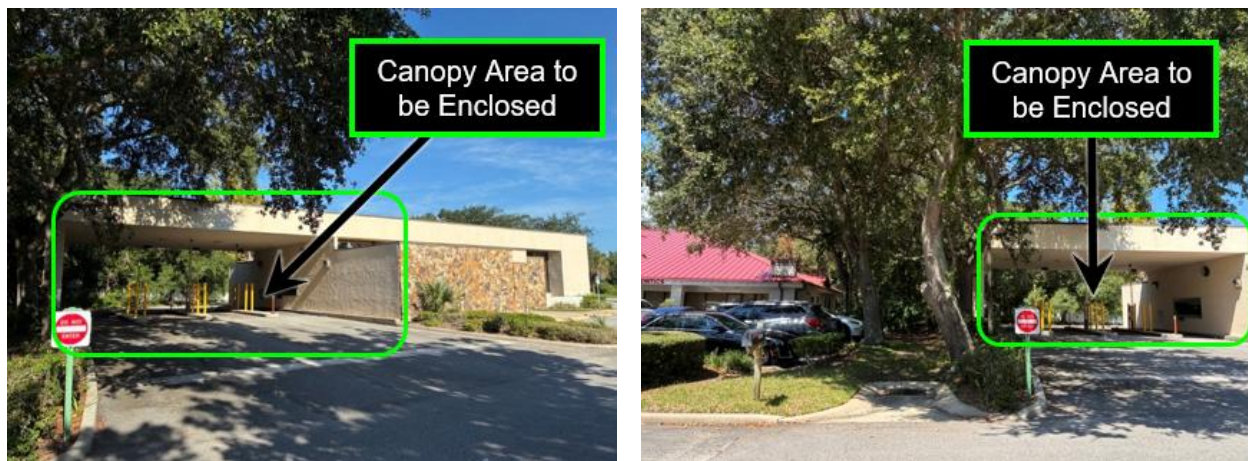


PROPOSED AMENDMENT

The requested Fifth Amendment to the Master Development Agreement (MDA) for the Robinson PCD only pertains to the subject property located at 4900 Clyde Morris Boulevard and does not include other lots within the PCD, nor does it change any permitted uses.

The only changes being requested to the Robinson MDA by the property owner of 4900 Clyde Morris Boulevard is to establish a 10-foot side yard building setback for the south side of subject property and to remove the 75-foot building separation requirement and allow the building separation requirement to be the applicable requirements of the Florida Building Code (FBC) and National Fire Protection Association (NFPA) standards.

According to the property owner, the requested changes to the MDA would allow the existing bank drive-thru canopy to be enclosed and converted into additional office space, which would be incorporated into the existing building. The project also includes interior and exterior renovations to the existing building, as well as the installation of new landscaping throughout the site. If approved, the vacant bank building and site at 4900 Clyde Morris Boulevard would be redeveloped as a dental office for White Wolf Dental.



Pictures of existing vacant bank building at 4900 Clyde Morris Boulevard

The following are the proposed amendments to the MDA that would only apply for the property located at 4900 Clyde Morris Boulevard:

Side Yard Building Setback: Reduce the side yard building setback from 15 feet to 10 feet. The requested 10-foot side yard building setback is consistent with the standard side yard building setback requirements in the current Land Development Code (LDC) for comparable City zoning districts that allow office and institutional uses, such as Professional Office, Neighborhood Commercial, Office/Residential Transition, and Government/Public Use (See Table 1 on Page 3). Therefore, the requested 10-foot side yard building setback is consistent with current side yard building setback requirements for other non-residential zoning districts that support office uses.

Tabel 1. Side Building Setbacks for Standard City Zoning Districts that Support Office uses

City Zoning Districts	Side Building Setback
Professional Office	10 Feet
Neighborhood Commercial	10 Feet
Office/Residential Transition	10 Feet
Government/Public Use	10 Feet

Building Separation: Remove the building separation requirement and require redevelopment of the building to comply with the applicable Florida Building Code (FBC) and National Fire Protection Association (NFPA) standards. The existing MDA requires a 75-foot separation between the building on the subject property and the building located on the adjacent lot to the south.

Current City dimensional standards for commercial and office zoning districts in Chapter 17 of the Land Development Code (LDC) do not establish a specific building separation requirement; instead, building separation is determined based on required setbacks and compliance with the Florida Building Code (FBC) and National Fire Protection Association (NFPA) standards. Consistent with the City's current development review process, building separation is evaluated through compliance with the applicable FBC and NFPA requirements rather than through a city-established building separation standard. The proposed amendment would remove the building separation requirement from the MDA and allow the lot to redevelop consistent with the applicable FBC and NFPA requirements, as well as the side yard setbacks established for the subject property and adjacent property.

If the MDA amendment is approved, the side yard building setback for the property at 4900 Clyde Morris Boulevard would be reduced to 10 feet. The adjacent property to the south has a required minimum side yard building setback of 15 feet, with an actual building setback of approximately 26 feet. Therefore, the separation between the buildings would be 36 feet, which exceeds the applicable building separation requirements in the Florida Building Code (FBC) and National Fire Protection Association (NFPA) standard of greater than 10 feet.



Picture of existing building at 4900 Clyde Morris Boulevard and adjacent office to the south with proposed building separation labeled

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The property is designated *Commercial* on the Future Land Use (FLU) map. The original MDA was found to be consistent with the Comprehensive Plan when it was approved in 1987. The proposed Fifth Amendment does not change the FLU designation for the subject property or the permitted uses allowed by the PCD and is consistent with the general intent of the City's Comprehensive Plan.

PUBLIC NOTICE

Public Notice signs were posted along Clyde Morris Boulevard on July 30, 2026. As of the posting of this agenda, staff has not received any inquiries regarding the proposed PCD Amendment.

RECOMMENDATION

Staff recommends approval of the Fifth Amendment to the Master Development Agreement for the Robinson PCD

ATTACHMENT

Exhibit 1 - Fifth Amendment to the Master Development Agreement for the Robinson Planned Commercial Development (See Ordinance Exhibit)



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. 2026-10: – MDA Amendment/Robinson PCD 5th Amendment (Case No. PRZA-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 subject property is located at 4900 Clyde Morris Boulevard, at the northwest corner of Clyde Morris Boulevard and Dunlawton Avenue, and is part of the Robinson Planned Commercial Development (PCD), which was approved by the Port Orange City Council in 1987. The property owner requests the following amendments to the MDA for the Robinson PCD based on the redevelopment plan for the building and site: 1) To reduce the internal side yard setback from 15 feet to 10 feet. 2) To remove the 75-foot building separation requirement and allow the building separation to be as required by the Florida Building Code (FBC) and National Fire Protection Association (NFPA).

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 9/15/2026

SUBJECT: (G21) First Reading - Ordinance No. 2026-13 - Code of Ordinance Amendment/Article III – Special Events, Section 58-53 (Case No. DCAM-26-0004)

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2026-13.

SUMMARY: Currently, the Code of Ordinances provides a three-day limit for setup and take-down before and after a Special Event. The Code also provides a process for City Council to approve an extended timeframe when setup and take-down activities exceed the three-day limitation.

The Code of Ordinances states that Special Events associated with a legal holiday or seasonal event, such as spring landscaping, Christmas tree sales, Halloween pumpkin sales, or sparkler sales, shall not exceed forty (40) consecutive calendar days and are limited to three (3) days prior to the event for setup and three (3) days after the event for take-down.

In recent years, some seasonal events have required additional setup and take-down time due to operational requirements. For example, last year, Home Depot and Lowe's were approved for an additional 30 days of setup/take-down time outside the actual event timeframe [e.g. Special Event ran from November 15, 2025, through December 24, 2025 (39 days); the tent and sales area set-up begin on October 24, 2025, and was completed November 14, 2025 (21 days); take-down was completed on January 2, 2026 (9 days)]. These requirements may include tent and electrical installation and inspection, the setup of seasonal merchandise (Christmas trees, pumpkins, etc.), internal business or tenant procedures for preparing and closing the site for sales, and scheduling the removal of tents or other rented structures.

After several years of requests for extended setup and take-down periods being brought before and approved by City Council for seasonal events, Staff is proposing an amendment to Chapter 58, Article III, Special Events, Section 58-53.

The proposed amendment would allow additional setup and take-down time beyond the three-day limitation for seasonal events involving the sale of seasonal merchandise, such as Christmas trees and pumpkins, to be approved by the Administrative Official. Approval would be based on a determination that the additional time requested is justified by the operational circumstances of the event. This may include the time

reasonably necessary for the delivery, placement, setup, or removal of equipment, tents, inventory, displays, or similar materials.

The proposed amendment would also include language requiring tents, other temporary structures, and merchandise associated with the event to be secured or removed in the event of an approaching hurricane, tropical storm, or other significant weather event.

If the Administrative Official does not approve the requested additional time for setup and takedown before and after a Special Event, the applicant may still request approval from the City Council.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2026-13	Ordinance No. 2026-13.doc
2.	Business Impact Estimate - DCAM-26-0004 - ORD 2026-13	Business Impact Estimate - DCAM-26-0004 - ORD 2026-13.docx

Penelope Cruz
Tim Burman
Shannon Balmer
Wayne Clark

Created/Initiated - 08/12/2026
Approved - 08/28/2026
Approved - 09/03/2026
Final Approval - 09/04/2026

ORDINANCE NO. 2026-13

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING CHAPTER 58,
ARTICLE III OF THE CODE OF ORDINANCES AMENDING
SECTION 58-53 TO ALLOW REQUESTS FOR
ADDITIONAL SETUP AND TAKEDOWN TIME FOR
SPECIAL EVENT SALES ASSOCIATED WITH LEGAL
HOLIDAYS AND SEASONAL EVENTS BE APPROVED BY
THE ADMINISTRATIVE OFFICIAL; PROVIDING FOR
CODIFICATION; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; PROVIDING FOR CODIFICATION;
PROVIDING FOR SCRIVENER'S ERRORS AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that the proposed amendments will make the code more efficient to use, support the City's redevelopment efforts, address issues encountered when applying the code, and improve the review and approval process; and

WHEREAS, for purposes of this Ordinance text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida, hereby amends Code of Ordinances, Chapter 58, Article III, Section 58-53 to read as follows:

Chapter 58, ARTICLE III. - SPECIAL EVENTS

Sec. 58-53. Limitations on number and duration of special events.

- (a) Special events held in conjunction with a regional event shall not exceed the duration of the regional event.
- (b) Special events associated with a legal holiday or seasonal event, such as Spring landscaping, Christmas trees, Halloween pumpkins, firework sales, shall not exceed 40 consecutive calendar days.
- (c) All other special events shall not exceed seven consecutive calendar days unless waived or modified by the city council.
- (d) A lot or parcel less than 14 acres in size may serve as a location of a special event, or any part of a special event, including parking, up to 40 days per calendar year. The 40-day limitation applies to all special events, including major special events and minor special events as defined in this article, and sidewalk sales events as provided in section 18-77 of this Code, unless waived or modified by the city council.
- (e) A lot or parcel equal to or greater the 14 acres may serve as a location of a special event, or any part of a special event, including parking, up to 100 days per calendar year. The 100-day limitation applies to all special events, including major special events and minor special events as defined in this article, and sidewalk sales events as provided in section 18-77 of this Code, unless waived or modified by the city council.
- (f) A lot or parcel located in the Riverwalk or Down Under Entertainment Districts, as defined in section 42-83 of this Code, may serve as the location of a special event up to 100 days per calendar year.
- (g) All approved special events shall have 72 hours prior to the event for set up and 72 hours after the event for take down of the event.
- (h) Additional set up and take down time/days beyond the limitation established above can be approved by the city council for all events other than those listed in subsection (b) above.
- (i) For events listed in subsection (b), additional set up and take down time/days beyond the limitation established above can be approved by the Administrative Official subject to a determination that the additional time requested is justified by considering the operational circumstances of the event, including the time reasonably necessary for the delivery, placement, setup, or removal of equipment, tents, inventory, displays, or similar materials. If the Administrative Official does not approve of the requested additional time, the applicant may request approval from the city council on a city council meeting agenda.

SECTION 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or

applications of this Ordinance which can be given effect without the invalid provision or application, and to this and the provisions of this Ordinance are declared severable.

SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. 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 _____, 2026

Passed and adopted on second and final reading on the _____ day of _____, 2026

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



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. 2026-10: – Code of Ordinance Amendment/Article III – Special Events, Section 58-53 (Case No. DCAM-26-0004)

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):

An amendment to Chapter 58, Article III, Special Events, Section 58-53 to allow addition set up and take down time/days beyond the three-day limitation for seasonal events only be allowed to be approved by Administrative Official upon a determination that the additional time requested is justified by the operational circumstances of the event, including the time reasonably necessary for the delivery, placement, setup, or removal of equipment, tents, inventory, displays, or similar materials. If the Administrative Official does not approve of the requested additional time, the applicant may request approval from the City Council.

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 9/15/2026

SUBJECT: (G22) Appeal of ITB #26-06 for Cambridge Pump Station

DEPARTMENT: Engineering

RECOMMENDED MOTION: Staff recommends upholding the City Manager's decision to deny Masci's bid protest.

SUMMARY: On May 29, 2026, the Purchasing Manager received three sealed bid responses for ITB #26-06, Cambridge Pump Station Upgrades. After review by Purchasing and Engineering staff, Gregori Construction, Inc. was determined to be the lowest responsive and responsible bidder. The bids received were as follows:

- Gregori Construction, Inc. - \$14,396,600.00
- Masci General Contractor, Inc. - \$14,720,277.00
- Prime Construction Group, Inc. - \$21,633,964.00

On June 28, 2026, Masci General Contractor, Inc. filed a Formal Bid Protest challenging the City's intended award to Gregori Construction, Inc. Masci asserted that Gregori's bid was non-responsive generally because the professional references submitted by Gregori did not demonstrate projects of a similar nature and size to the Cambridge Pump Station Upgrades project.

On July 6, 2026, Masci presented its protest to the City Manager in the presence of the Assistant City Manager, City Attorney, Finance Director, City Engineer, and Purchasing Manager. Following review of the protest and the bid documents, the City Manager issued a written decision on July 30, 2026 (included in the agenda packet), denying the protest in its entirety and affirming the City's determination that Gregori Construction, Inc. is the lowest responsive and responsible bidder.

Masci has appealed the City Manager's decision to the City Council pursuant to the City's procurement procedures. The Council's role is to consider the appeal and determine whether to grant or deny it. If the Council denies the appeal, Staff recommends affirming the City's determination that Gregori Construction, Inc. is the lowest responsive and responsible bidder. If the Council grants the appeal, the Council may provide direction to award consistent with its decision. Formal award of this ITB will be brought back at a future meeting based on Council's decision on the appeal.

ATTACHMENTS:

1.	Appeal Schedule	Appeal Schedule.pdf
2.	Masci Bid Protest	Masci Bid Protest .pdf
3.	CM Response to Bid Protest Letter to Masci	CM Response to Bid Protest Letter to Masci.pdf
4.	Gregori Opp to Masci Bid Protest Final	Gregori Opp to Masci Bid Protest Final.pdf
5.	Appeal to City Council (MASCI)	Appeal to City Council (MASCI).pdf
6.	Gregori Bid Proposal - Cambridge Pump Station	Gregori Bid Proposal - Cambridge Pump Station.pdf
7.	Masci Bid Proposal - Cambridge Pump Station	Masci Bid Proposal - Cambridge Pump Station.pdf
8.	A-1 Gellis, Sean W-Response to Bid Protest Letter	A-1 Gellis, Sean W-Response to Bid Protest Letter.pdf
9.	A-2 Intent to Award	A-2 Intent to Award.pdf
10.	A-3 ITB 26-06 Cambridge Final Bid Tab	A-3 ITB 26-06 Cambridge Final Bid Tab.pdf
11.	A-4 Department Justification Memo - Intent to Award with Unforeseen allowance	A-4 Department Justification Memo - Intent to Award with Unforeseen allowance.docx
12.	A-5 Email Chain re Intent to Award	A-5 Email Chain re Intent to Award.pdf
13.	A-6 ITB 26-06 Cambridge Pump Station Upgrades FINAL	A-6 ITB 26-06 Cambridge Pump Station Upgrades FINAL.pdf
14.	A-7 Gregori Form 7.8	A-7 Gregori Form 7.8.pdf
15.	A-8 Masci Form 7.8	A-8 Masci Form 7.8.pdf
16.	A-9 Gregori Attachment F	A-9 Gregori Attachment F.pdf
17.	A-10 Gregori List of Subcontractors	A-10 Gregori List of Subcontractors.pdf
18.	A-11 Section 2-266 City Ordinances	A-11 Section 2-266 City Ordinances.pdf
19.	A-12 City of Port Orange 2017 Purchasing Manual	A-12 City of Port Orange 2017 Purchasing Manual.pdf
20.	Masci's Reply to Gregori's Response	Masci's Reply to Gregori's Response.pdf

Amanda Bonin
Junos Reed
Matthew Jones
Wayne Clark

Created/Initiated - 08/31/2026
Approved - 09/02/2026
Approved - 09/03/2026
Final Approval - 09/04/2026

Schedule for Appeal of Bid Protest of the Award of ITB 26-06

- I. **Mayor.** Mayor will open item and give the floor to the City Attorney for brief overview.
- II. **City Attorney.** The City Attorney will explain the process and order of operations for this appeal.
- III. **City staff.** A representative of the City's staff will briefly describe the procedural history of the solicitation and the process that led to the staff's recommendation.
- IV. **Appellant Protestor (Masci).** Appellant Protestor (or his/her representative or counsel) will have **a maximum of 30 minutes** to make its full presentation.
- V. **Affected Party (Gregori).** Affected Party (or his/her representative or counsel) will have **a maximum of 30 minutes** to make his/her full presentation.
- VI. **Rebuttal of Appellant Protestor (Masci).** Appellant Protestor (or his/her representative or counsel) will have **a maximum of 10 minutes** to respond to Affected Party's presentation.
- VII. **City Council.** City Council will have the opportunity to ask questions of all parties regarding the information presented.
- VIII. **Public Comments.** Opportunity for comments from the public.
- IX. **Deliberations.** City Council will deliberate and render a decision. The decision will be the final action of the City. The Appellant will have 30 days to appeal to the Circuit Court of Volusia County, Florida.

Note: City Council is encouraged to hold questions until after the presentations and rebuttal, but may ask questions at any time during the process.



GELLIS LAW
— **PLLC** —
A CONCIERGE COUNSELOR

June 18, 2026

City of Port Orange

Attn: Custodian of Public Records // Purchasing Division // Anthony McCall

1000 City Center Circle

Port Orange, FL 32129

cityclerk@port-orange.org

purchdiv@port-orange.org

amccall@port-orange.org

RE: Public Records Request Pursuant to Chapter 119, Florida Statutes, and Section 119.0701, Florida Statutes

Project: ITB #26-06, Cambridge Pump Station Upgrades

Dear Custodian of Public Records and Purchasing Manager/Mr. McCall:

This firm represents Masci General Contractor, Inc., who submitted a bid in response to the procurement referenced above. It's our understanding the City intends to award to Gregori Construction in contravention to its own bid specifications and Florida law.

Please treat this correspondence as a request for public records under section 119.07, Florida Statutes, and provide a prompt acknowledgment of my request. For purposes of this request, the term "public records" has the same meaning as section 119.011(12), Florida Statutes. The expectation is that you will conduct a reasonable search to locate all responsive records, including those located on private accounts or devices. *Government in the Sunshine Manual (2022)* at 84-85 (citing *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040-1041 (Fla. 4th DCA 2018)). A good faith response includes making reasonable efforts to determine from other offices or employees within the agency whether such a record exists, and if so, the location at which the record can be accessed. § 119.07(1)(c), Fla. Stat.

RECORDS REQUESTED

BID EVALUATION, RESPONSIVENESS, AND RESPONSIBILITY

1. All bid tabulation sheets, responsiveness checklists, compliance review worksheets, evaluation matrices, scoring sheets, or similar documents used by the City, the Purchasing Division, Public Works, or any consultant to evaluate whether each bid submittal for ITB #26-06 was complete, responsive, and/or from a responsible bidder, including any notations, annotations, comments, or markups regarding missing, incomplete, or non-conforming documents.
2. All emails, memoranda, letters, notes, text messages, Microsoft Teams messages, instant messages, and other written or electronic communications between or among City staff (including but not limited to the Purchasing Division, Public Works Department, Engineering

Division, Utilities Department, City Manager's Office, and City Attorney's Office), elected officials, and/or the City's consultants, engineers, or attorneys regarding the evaluation, review, scoring, ranking, or recommendation of award for ITB #26-06, including but not limited to any communications regarding the qualifications, responsiveness, responsibility, experience, capacity, financial resources, or bonding capacity of any bidder.

3. All emails, memoranda, notes, text messages, and other written or electronic communications that reference, discuss, or evaluate Gregori Construction, Inc.'s bonding capacity, bonding capacity letter, surety bonding, financial resources, KeyBank letter, line of credit, credit capacity, or ability to obtain performance and payment bonds for ITB #26-06.
4. All emails, memoranda, notes, text messages, and other written or electronic communications that reference, discuss, or evaluate Gregori Construction, Inc.'s experience, professional references, qualifications, project history, workforce size, equipment capacity, subcontractors, or ability to perform the work described in ITB #26-06, including any discussions regarding Gregori's experience (or lack thereof) with large-diameter pipe installation, jack-and-bore construction, railroad-adjacent construction, or drainage pump station construction.
5. All emails, memoranda, notes, text messages, and other written or electronic communications that reference, discuss, or evaluate Masci General Contractor, Inc.'s bid, qualifications, experience, references, pricing, responsiveness, responsibility, or any aspect of MASCI's submittal for ITB #26-06.
6. All records of reference checks conducted by the City or its agents for any bidder on ITB #26-06, including but not limited to notes, emails, telephone call logs, written summaries, questionnaires, reference check forms, and any responses received from references listed on Form 7.8 or otherwise contacted.

STAFF RECOMMENDATION AND AWARD DECISION

7. All internal memoranda, staff reports, agenda item summaries, agenda backup materials, presentation materials, briefing documents, and draft or final recommendation documents prepared in connection with the evaluation and/or recommendation to award ITB #26-06, including any drafts, revisions, tracked changes, or prior versions thereof.
8. All emails, memoranda, notes, text messages, and other communications between City staff and the City Manager, Deputy City Manager, or any elected City Council member regarding ITB #26-06, the Cambridge Pump Station Upgrades project, or the recommendation of award, including any pre-meeting briefings or discussions.
9. All City Council agenda materials, meeting minutes (draft or final), audio recordings, video recordings, and transcripts related to any City Council discussion or action on ITB #26-06 or the Cambridge Pump Station Upgrades project.

COMMUNICATIONS WITH BIDDERS AND THIRD PARTIES

10. All written or electronic communications (including emails, letters, text messages, and any other form of correspondence) between the City (including but not limited to staff, the Purchasing Division, Public Works, the City Manager's Office, the City Attorney's Office, consultants, and the engineer of record) and Gregori Construction, Inc. (including its officers, employees, agents, and subcontractors), from the date of solicitation issuance (March 27, 2026) through the date of this request.
11. All written or electronic communications between the City and any other bidder on ITB #26-06 (other than MASCI), from the close of the bid submission period (June 5, 2026) through the date of this request.
12. All Cone of Silence logs, communication logs, or records maintained by the Purchasing Division or any City department documenting contacts or attempted contacts by bidders, proposers, lobbyists, or their agents regarding ITB #26-06.
13. All written or electronic communications between the City and the project's engineer of record, design consultant, or any third-party consultant regarding the evaluation of bids, the qualifications of bidders, or the recommendation of award for ITB #26-06.

BONDING, FINANCIAL CAPACITY, AND INSURANCE

14. All documents submitted by Gregori Construction, Inc. in support of or as a substitute for the bonding capacity letter requirement of ITB #26-06, Section 6, and all internal communications regarding the sufficiency or acceptability of such documents.
15. Any correspondence between the City and any surety company, bonding agent, or financial institution regarding any bidder's bonding capacity or financial qualifications for ITB #26-06.

FEMA AND FEDERAL FUNDING COMPLIANCE

16. All emails, memoranda, notes, and other communications between or among City staff, FEMA, the Florida Division of Emergency Management (FDEM), or any other federal or state agency regarding the procurement process, award criteria, bidder qualifications, or compliance requirements applicable to ITB #26-06, including any discussions regarding 2 C.F.R. Part 200 requirements, Davis-Bacon Act compliance, or federal procurement standards.
17. All FEMA grant applications, Hazard Mitigation Grant Program (HMGP) applications, project worksheets, or other federal funding documents submitted by the City for the Cambridge Pump Station Upgrades project that reference or establish procurement requirements, including any conditions or restrictions on the award process.
18. Any FEMA or FDEM correspondence approving, commenting on, or establishing requirements for the City's procurement process for this project.

PROJECT HISTORY AND SCOPE

19. All emails, memoranda, engineering reports, design memoranda, or other communications from January 1, 2025 through the date of this request discussing the scope, design, complexity, risk factors, or construction challenges associated with the Cambridge Pump Station Upgrades project, including any discussions regarding the jack-and-bore under the FEC Railway, large-diameter pipe installation, or the upgrade from 25-year to 100-year storm capacity.
20. All records reflecting the City's prior construction history at the Cambridge Pump Station, including the original construction contract, contractor, completion date, and any subsequent maintenance, repair, or modification contracts.

BID PROTEST AND POST-AWARD

21. All emails, memoranda, notes, and other communications regarding any bid protest, notice of protest, challenge, complaint, or objection received by the City regarding ITB #26-06, including any internal discussions regarding the City's response to such protest(s).

POLICIES AND PROCEDURES

22. The City's current written policies, procedures, checklists, or standard operating procedures governing the evaluation of bid responsiveness and bidder responsibility for construction contracts, including any specific guidance regarding the review of bonding capacity letters, financial qualification documents, or professional references.
23. Any written policies, procedures, or guidance documents governing the application of Section 2-266, Code of Ordinances, City of Port Orange, in determining the "lowest and best responsible bidder," including any internal memoranda or training materials regarding the factors enumerated therein.

FORMAT AND DELIVERY

We request that responsive records be provided in electronic format where available (PDF preferred), and in paper format where electronic copies do not exist. We are prepared to pay reasonable duplication costs as provided by Section 119.07(4), Florida Statutes. Please advise us of the estimated cost, if any, before producing the records.

LEGAL BASIS AND COMPLIANCE TIMELINE

This request is made pursuant to Chapter 119, Florida Statutes, which requires that public records be made available for inspection and copying. The City of Port Orange is a public agency subject to Chapter 119.

Any contractors acting on behalf of the City pursuant to the Contract Documents, is subject to Section 119.0701, Florida Statutes, which requires contractors acting on behalf of public agencies to keep, maintain, and produce public records related to the contract.

We respectfully request that all responsive records be produced within a reasonable time. Please be advised that if a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract, and a contractor who fails to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

Further, if a civil action is filed to compel production and the court determines that the contractor unlawfully refused to comply within a reasonable time, the court shall assess reasonable costs of enforcement, including attorney fees. We trust that such action will not be necessary.

PRESERVATION NOTICE

This letter also serves as a litigation hold and preservation notice. Masci General Contractor, Inc. anticipates that litigation may be necessary. The City of Port Orange and its contractors/representatives are hereby directed to preserve all records responsive to this request, as well as all records that may be relevant to any claims, disputes, or litigation arising from the project, including all electronically stored information (emails, text messages, voicemails, electronic files, and metadata). No records responsive to this request, or potentially relevant to the project disputes, should be deleted, destroyed, altered, or overwritten.

Please direct all responses and communications regarding this request to the undersigned.

Respectfully,

/s/ Sean Gellis

Sean Gellis, B.C.S.*

**Florida Bar Board Certified Expert in State and
Federal Government & Administrative Practice*

*Former FDOT General Counsel
Author of FloridaProcurements.com*



CITY OF PORT ORANGE

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July 29, 2026

Sean W. Gellis, Esq.
Gellis Law, PLLC
2931 Crawfordville Hwy
Crawfordville, FL 32327
sean@gellislaw.com

Re: Response to Masci Formal Bid Protest – ITB #26-06

Dear Mr. Gellis:

This letter constitutes my final decision regarding the Formal Bid Protest filed by Masci General Contractor, Inc. ("Masci") on June 28, 2026, challenging the City's intended award of ITB #26-06, Cambridge Pump Station Upgrades, to Gregori Construction, Inc. ("Gregori").

After careful review of Masci's protest, the bid submissions, the solicitation requirements, and applicable law, the City hereby denies the protest in its entirety and affirms its decision to recommend award of the contract to Gregori Construction, Inc.

The City sincerely thanks Masci for its participation in this competitive procurement. Masci is a well-established local contractor in the Port Orange community. The City values Masci's interest in this project and appreciates the time and resources Masci devoted to preparing a comprehensive bid response. Competitive bidding serves the public interest, and robust participation by qualified contractors benefits the City and its taxpayers.

Background

By way of background, the City publicly solicited bids for the Cambridge Pump Station Upgrades project under ITB #26-06. Three responsive bids were received and opened on June 5, 2026. Gregori submitted the lowest bid. Masci's bid was more than \$320,000 higher than Gregori's. On June 16, 2026, the City posted its Notice of Intent to Award the contract to Gregori. Masci timely filed its Notice of Protest on June 18, 2026, and submitted its Formal Bid Protest on June 28, 2026.

Legal Standards

Florida law grants public agencies broad discretion in awarding competitively bid construction contracts. A public body has wide discretion in soliciting and accepting bids for public

improvements, and its decision, when based on an honest exercise of this discretion, will not be overturned even if it may appear erroneous and even if reasonable persons may disagree. *Liberty Cty. v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982). To put it another way, even if the public entity makes an erroneous decision about which reasonable people may disagree, the discretion of the public entity to solicit, accept and or reject contract bids should not be interfered with by the courts, absent a showing of dishonesty, illegality, fraud, oppression or misconduct. *Sutron Corp. v. Lake Cty. Water Auth.*, 870 So. 2d 930 (Fla. 5th DCA 2004). This discretion may not be exercised arbitrarily or capriciously but must be based on facts reasonably tending to support the conclusions reached by the agency. *Miami-Dade Cty. v. Church & Tower*, 715 So. 2d 1084 (Fla. 3rd DCA 1998).

Section 255.20(1), Florida Statutes, requires municipalities to competitively award public construction projects exceeding \$300,000 to an appropriately licensed contractor. The statute expressly authorizes the City to establish procedures for conducting the bidding process and is not intended to restrict the City's rights to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder.

According to the City's procurement guidelines, a responsive bidder is one that has substantially conformed with all material requirements and criteria set forth in the solicitation. A responsible bidder is one having the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having a record of timely and acceptable past performance that will assure good faith performance.

The City's Code of Ordinances, Section 2-266, provides that in determining the lowest and best responsible bidder, the City should consider, in addition to price, factors including the ability, capacity, and skill of the bidder to perform the contract; whether the bidder can perform within the time specified; the character, integrity, reputation, judgment, experience, and efficiency of the bidder; the quality of performance of previous contracts; financial resources; and such other factors as appear pertinent.

Gregori's Bid is Responsive

Masci contends that Gregori's bid is non-responsive because Gregori's professional references on Form 7.8 are not for projects "similar in nature and size" to the Cambridge Pump Station Upgrades. The City disagrees.

Form 7.8 requires bidders to provide three current and correct references from clients for similar services and to certify that the bidder "has successfully done so on recent projects similar in nature and size." The form does not define "similar" with mathematical precision, nor does it require that reference projects be identical in scope, value, or technical specifications to the solicited work. To impose such an exacting standard would stifle the ability for any prospective bidder to ever successfully bid on a project larger or more complex than its last.

Gregori's three references include a complete sanitary sewer lift station replacement valued at \$2,795,000 for the City of Melbourne, a complete lift station replacement valued at \$1,285,000 for Brevard County, and installation of 2,848 linear feet of 48-inch reinforced concrete pipe with junction boxes valued at \$2,061,225 for Seminole County. While these projects are smaller in

total contract value than the Cambridge Pump Station Upgrades, they demonstrate relevant experience in municipal utility infrastructure construction, underground piping systems, pump station work, and coordination with public agencies—all skills directly applicable to the solicited scope of work. The City concedes that Masci also provided references exhibiting relevant experience. Had Masci been the low bidder, the City would have certainly found that Masci was both responsive and responsible.

The Third District Court of Appeal has recognized that in a bid protest context, the City has discretion to determine whether a bidder's qualifications and references satisfy the solicitation's requirements, provided that determination is not arbitrary or capricious. *Miami-Dade Cty. v. Church & Tower*, 715 So. 2d 1084 (Fla. 3d DCA 1998). The City's Purchasing Division and City Engineer reviewed Gregori's references and determined they demonstrated sufficient relevant experience. That determination is supported by the record.

Masci relies heavily on *American Engineering & Development Corp. v. Town of Highland Beach*, 20 So. 3d 1000 (Fla. 4th DCA 2009), in which the court affirmed rejection of the lowest bidder because it did not list projects performed for municipalities or projects on which it was the prime contractor, as the bidding specifications required. Highland Beach is distinguishable. In that case, the lowest bidder failed to provide the specific category of projects the bid specifications mandated—municipal projects where the bidder served as prime contractor. Here, Gregori provided three references for utility infrastructure projects performed for municipal and county clients. Gregori served as the prime contractor on each reference project. The references satisfy the form's requirements, even if Masci's references reflect larger and more complex projects.

A bid is non-responsive only when it fails to conform in all material respects to the solicitation. Minor variations or matters of degree in the qualitative assessment of references do not render a bid non-responsive. Such variations are properly considered as part of the responsibility determination, not as a basis for disqualification on responsiveness grounds. *Intercontinental Props., Inc. v. State Dep't of Health & Rehab. Servs.*, 606 So. 2d 380 (Fla. 3d DCA 1992).

The City finds that Gregori's bid conforms in all material respects to the solicitation and is responsive.

Gregori's Bid is Responsible

Masci further contends that Gregori is not a responsible bidder under Section 2-266 of the Code because Gregori lacks the experience, capacity, and financial resources to perform the Cambridge Pump Station Upgrades project. The City has carefully evaluated Gregori's qualifications under the ten factors enumerated in Section 2-266 and finds that Gregori is a responsible bidder capable of performing this contract.

Ability, Capacity, and Skill. Gregori has demonstrated its ability to perform municipal utility infrastructure projects through its reference projects, which include pump station construction and large-diameter pipe installation. Gregori holds an active Florida General Contractor license and has successfully completed projects for municipalities and counties throughout Florida. While the Cambridge project represents a step up in scale for Gregori, it is not unprecedented for

contractors to successfully perform projects larger than their prior work, particularly when supported by adequate bonding and subcontractor expertise¹.

Financial Resources and Bonding Capacity. Gregori has provided a bonding capacity letter from Great American Insurance Company, an authorized surety, reflecting single-project capacity of \$40 million and aggregate capacity of \$60 million. This bonding capacity is more than adequate to support the approximately \$14 million Cambridge contract. The surety's willingness to bond Gregori for this project constitutes an independent professional assessment of Gregori's financial capacity and ability to perform.

Florida law recognizes that payment and performance bonds provide critical financial assurance that protects the public entity and ensures that subcontractors and suppliers are paid. The City will require Gregori to furnish payment and performance bonds in the full contract amount prior to execution of the contract, as required by Section 255.05, Florida Statutes. These bonds provide the City with a legally enforceable guarantee that the project will be completed and that all subcontractors, suppliers, and laborers will be paid. This financial assurance addresses Masci's concerns about Gregori's capacity to perform and eliminates the risk to the City.

Subcontractor Qualifications. Gregori has identified qualified subcontractors for specialized elements of the work, including Huxted Trenchless for jack-and-bore or microtunneling installation of the 54-inch DIP storm main under the FEC Railway. Huxted Trenchless possesses substantial trenchless construction experience and has successfully completed major railroad crossing projects. They specialize in micro tunneling, jack-and-bore installations, guided auger boring, and horizontal directional drilling. Huxted Trenchless is widely considered in the industry to be a highly experienced trenchless contractor capable of performing a large-diameter railroad jack-and-bore/microtunnel installation. Subcontractor expertise is a routine and accepted means of addressing specialized scope elements in public construction. The fact that Gregori and Huxted Trenchless have not previously worked together does not disqualify Gregori or render Gregori incapable of performance. Many successful construction projects involve first-time teaming arrangements between prime contractors and subcontractors. The surety bonding Gregori's performance has underwritten this risk.

Experience and Quality of Past Performance. Gregori's references reflect satisfactory performance on municipal utility projects. While Masci may have a longer and more extensive track record in large-scale drainage projects, this does not disqualify Gregori or render Gregori non-responsible. Florida law does not require that the City award to the most experienced or most qualified bidder, only that the successful bidder be qualified and responsible. *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446 (Fla. 1st DCA 1978), *Liberty Cty. v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982)

Character, Integrity, and Reputation. Masci does not challenge Gregori's character, integrity, or reputation. The City has no information suggesting any deficiency in these areas.

Other Pertinent Factors. Masci raises concerns about certain pre-bid questions Gregori submitted to City staff regarding railroad construction requirements, insurance, and project

¹ It's worth noting that per their respective bid submittals, neither Masci, nor Gregori, intend to self-perform the most complex portion of the project - jack and bore beneath the railroad tracks.

details. The City does not view these questions as evidence of disqualifying inexperience. To the contrary, a bidder's submission of detailed technical questions demonstrates diligence and a desire to fully understand project requirements before bidding. Bidders routinely submit questions during the solicitation process to clarify scope, specifications, and coordination requirements. The City provided responses through a formal addendum process, and all bidders had access to the same information.

Under the legal framework established by *Liberty County v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982), and *Department of Transportation v. Groves-Watkins Constructors*, 530 So. 2d 912 (Fla. 1988), the City has broad discretion to evaluate bidder qualifications and determine responsibility, and that determination is entitled to strong judicial deference when based on an honest exercise of discretion. The City has exercised that discretion here and finds that Gregori is a responsible bidder capable of performing this contract.

City Complied with Procurement Procedures

Masci contends that the City failed to follow its own Procurement Manual by not conducting a substantive review of bidder qualifications and scope compliance. The City disagrees.

The City's Purchasing Division, in coordination with the City Engineer, conducted a thorough responsiveness review of all bid submissions. This review confirmed that each bidder submitted all required forms, certifications, and documentation; that bid bonds were in order; that bidders held appropriate licenses; and that the bids conformed to the material requirements of the solicitation. The bid tabulation sheet reflects this review and documents the results.

The City's evaluation process also included a substantive assessment of bidder qualifications, references, and capacity under Section 2-266. City staff reviewed Gregori's professional references, bonding capacity letter, financial information, and subcontractor list. The City Engineer, a licensed Professional Engineer with extensive experience in municipal infrastructure projects, evaluated the technical aspects of Gregori's submission and concluded that Gregori is qualified to perform the work.

Masci's characterization of the City's review as a "ministerial exercise" that "substituted form for substance" is incorrect. The fact that the bid tabulation sheet uses a checklist format does not mean that the review was superficial or that substantive judgments were not made. The tabulation sheet is an administrative tool for documenting compliance with formal requirements. The substantive evaluation of qualifications and responsibility is reflected in the award recommendation.

Public Records

Masci devotes substantial attention in its written protest to allegations that the City violated the Public Records Act and denied Masci due process by not immediately producing all requested procurement records. Yet, in its presentation at the protest hearing, Masci chose to skip over any discussion regarding public records. Nonetheless, the City responds as follows:

The City received a public records request from you, on behalf of Masci, on June 18, 2026. The request was broad in scope and required coordination among multiple City departments and extensive review to identify any potentially exempt material, as required by law. The City Attorney communicated with you regarding the scope of the request and the time required for a complete response on the same day your request was made exhibiting genuine concern regarding the potential for delay considering the sheer magnitude of the ask. Notwithstanding Masci's persistent refusal to focus its request for the sake of time, the City produced Gregori's bid submittal promptly and subsequently produced additional records, including the bid tabulation sheet and correspondence, all prior to the protest deadline². To date, the only records that have not been provided are those records that the City required a cash deposit to produce and for which Masci has declined to pursue.

Florida law allows a custodian a reasonable time to retrieve records and review them for potential exemptions. What constitutes reasonable time is a fact-specific inquiry determined by the unique circumstances, *magnitude, and scope* of the request, as well as any operational constraints of the responding agency. *Exec. Office of the Gov. v. Fla. Ctr. for Gov't Accountability, Inc.*, 408 So. 3d 839 (Fla. 1st DCA 2025) (emphasis added). Although the protest attempts to summarize the scope of the request as simply providing the purchasing file, a review of the actual substance of the 5-page records request, seeking various records spanning over a 20 year period, clearly demonstrates that the City's approach and response time were more than reasonable under the circumstances.

More fundamentally, Masci has not been denied due process. Masci received the solicitation documents, submitted a bid, received notice of the intended award, filed a timely protest, and has now received a written decision on the merits of that protest. Masci had access to the bid documents that formed the basis for its protest allegations—namely, the solicitation itself, Gregori's bid submission, and Masci's own bid. Due process does not require that a protesting bidder receive every internal memorandum, email, or draft document available before filing a protest. The protest process affords a meaningful opportunity to challenge the award decision, and that opportunity has been provided.

Conclusion

The City has conducted a competitive procurement in accordance with Florida law and the City's procurement process. Gregori Construction, Inc. submitted the lowest responsive and responsible bid. Gregori has provided adequate financial assurance through its surety bonding that the project will be performed in accordance with the contract documents and that all subcontractors, suppliers, and laborers will be paid. The City believes that Gregori is capable of performing this work successfully with the subcontractors it has selected.

² Masci concedes in its protest (see par. 13) that Masci made its own records request, without the assistance of counsel, requesting the Gregori bid submittal. Purchasing staff provided the Gregori bid to Masci on the same day of the request – June 16, 2026 – which happened to also be the same day as the bid opening.

Accordingly, the City denies Masci's protest and affirms its decision to recommend the award of ITB #26-06, Cambridge Pump Station Upgrades, to Gregori Construction, Inc.

Masci may appeal this decision to the City Council in accordance with the City's procurement procedures, or may seek judicial review in the Circuit Court for Volusia County.

The City thanks Masci for its continued interest in working with the City of Port Orange and looks forward to Masci's participation in future procurement opportunities.

Sincerely,



Wayne Clark, City Manager
City of Port Orange

cc: City Attorney

STATE OF FLORIDA
CITY OF PORT ORANGE

MASCI GENERAL CONTRACTOR, INC.

Petitioner,

v.

STATE OF FLORIDA,
CITY OF PORT ORANGE

Respondent.

//

**GREGORI CONSTRUCTION, INC.'S OPPOSITION TO MASCI GENERAL
CONTRACTOR, INC.'S APPEAL OF REJECTION OF BID PROTEST (ITB 26-06 —
CAMBRIDGE PUMP STATION UPGRADES)**

Gregori Construction, Inc. ("Gregori") submits this opposition through the City of Port Orange Purchasing Division in response to the Formal Written Bid Protest filed by Masci General Contractor, Inc. ("Masci") concerning ITB 26-06, Cambridge Pump Station Upgrades ("ITB" / "Project").

The City Manager has considered and denied Masci's initial protest, and Masci has appealed such denial to the City Council of the City of Port Orange. Gregori opposes Masci's position. However, this letter, written as Gregori's response in opposition to Masci's appeal, remains provisional pending receipt of Masci's actual City Council appeal and exhibits, the City Manager's written decision, the Council agenda item and staff memorandum, and written instructions governing the Council proceeding because none were provided to Gregori prior to the City's declared deadline for Gregori to submit this letter. Gregori reserves the right to supplement after those materials are provided.

Consistent with the Cone of Silence, Gregori directs this submission and all related requests exclusively through the Purchasing Division.

BACKGROUND AND SUMMARY OF RELIEF REQUESTED

The City received bids for the subject ITB on June 5, 2026. The bid tabulation identified Gregori's total as \$14,396,600 and Masci's as \$14,720,277 and deemed both bidders responsive. The tabulation was completed by the City's Purchasing Agent, witnessed by the Purchasing Manager, and approved by the City Engineer.

Because both Gregori and Masci were responsive and responsible bidders and because Gregori's bid was \$323,677 lower than Masci's, the City issued its Notice of Intent to Award to Gregori.

After Masci protested, the City stayed the award process, pending resolution of Masci's protest. The Purchasing Division, technical staff, and City Manager thereafter considered Masci's arguments, and the City Manager denied the protest. That review was performed by the City personnel best positioned to evaluate the procurement: the Purchasing Division and technical staff who know the project, understand its construction risks, have experience with the contractors, reviewed the proposed subcontractors, and are familiar with the City's own performance history. Council retains the final decision-making authority, but it considers the appeal with the benefit of that completed professional review—not on a blank record.

Substantively, Masci's protest does not identify a material qualification to Gregori's price, scope, schedule, bid security, or contractual obligations. Its protest principally argues that Masci is larger, more local, or comparatively more experienced and asks the City to convert those differences into findings that Gregori's bid was nonresponsive or non-responsible.

As discussed herein, the record does not support that result, and Gregori requests that the City Council affirm the staff determination, deny Masci's appeal, and proceed with award to Gregori as the lowest responsive and responsible bidder.

RESPONSIVENESS AND RESPONSIBILITY

ITB 26-06 is a sealed-bid procurement governed by the lowest-responsive-and-responsible-bidder standard. It is not an RFP, qualifications procurement, or comparative selection of the contractor which the City considers "best," "most experienced," "most local," or "most responsible," and Masci's attempt to change the nature of the ITB is improper because Florida courts expressly recognize the distinction in project bidding requirements. *See City of Sweetwater v. Solo Construction Corp.*, 823 So. 2d 798 (Fla. 3d DCA 2002) (rejecting an effort to bypass the lowest responsive and responsible bidder in favor of a contractor the municipality considered comparatively superior).

Responsiveness (which pertains to the bid) asks whether the bid materially conforms to the solicitation. Responsibility (which pertains to the bidder) asks whether the bidder possesses the capability, resources, integrity, and reliability necessary to perform. Thus, if Gregori and Masci are both responsive and responsible by the terms of the ITB, Gregori's lower price controls the outcome of the bid. That is exactly what happened here.

To avoid this outcome, and as discussed below, Masci asserts that it is "more" qualified than Gregori based upon unpublished bidding criteria and then characterizes that purported differential in qualifications as a demonstration that Gregori is not responsible and that its bid was nonresponsive. The City Council should reject this erroneous position and merely ask whether the City's technical staff were correct in their determination that Gregori met the requirements the City actually published in the ITB, and if so, whether Gregori's bid was lower than Masci's.

RESPONSE TO MASCI'S PROTEST GROUNDS

A. Gregori Submitted the Three Form 7.8 References required by the ITB.

Please refer to the following items from the original bid process: Form 7.7 (page 7), Form 7.8, Gregori Bid (page 12-19, 21).

The ITB required bidders supply three verifiable references involving “similar” work. Importantly, the ITB did not require:

- three projects *identical* to the Cambridge Project;
- three projects exceeding a specified dollar value;
- three railroad projects;
- three projects involving 72-inch pipe;
- three projects combining every Cambridge component; or
- three projects performed within Port Orange or Volusia County.

As part of its bid, Gregori listed the following projects:

- City of Melbourne — Complete Lift Station Replacement — \$2,795,000
- DRMP/Brevard County — S19 Complete Lift Station Replacement — \$1,285,000
- Seminole County — 2,848 linear feet of 48-inch RCP and junction boxes — \$2,061,225

In its protest, Masci focuses primarily on the projects’ dollar values being less than the value of the ITB. But, the ITB contained no mathematical definition of “similar in size,” and contract value is not the only—or necessarily the most important—measure of relevant construction experience.

Gregori selected these references because they demonstrated successful performance of technically complex municipal utility and drainage projects involving risks central to Cambridge. The reference relationships show experience with deep excavation, high groundwater, dewatering, sheet piling and cofferdams, bypass operations, stormwater-flow diversion, constrained construction sites, active municipal infrastructure, subcontractor management, safety, and schedule and cost control. Thus, Masci’s bid protest (on this point) does little more than confirm that Masci’s determination of similarity is dollars and quantity counts – not technical skill. Masci’s interpretation would require the City Council to invent unstated thresholds: how close must a reference be in dollar value, pipe diameter, or component count? The City did not advertise such thresholds, and staff reasonably did not apply them. Likewise, the City Council should reject Masci’s position.

B. Gregori’s Original Bid Demonstrated Capacity Beyond the Short Form 7.8 Descriptions.

Please refer to the following from the original bid process: Form 7.7, equipment information, submitted personnel resumes, bonding-capacity letter.

Masci treats Gregori’s three brief Form 7.8 descriptions as though they were the entire representation of Gregori’s submission that could inform a determination of responsibility. They were not.

Gregori’s bid contained resumes for the actual proposed team. Those resumes identified extensive experience in large-diameter drainage work, deep structures, excavation support, dewatering,

railway work, utility construction, shoring systems, temporary structures, foundations, safety management, subcontractor coordination, and management of substantial construction operations.

Ironically, in its bid protest, Masci emphasizes that its president, Leonel Masci, is a professional engineer, purportedly in some sort of attempt to show that Masci is “more” qualified than Gregori. Masci overlooked that Gregori’s bid included the resumes of two professional engineers on the Gregori project team:

- Seth Horwat, P.E., is licensed in Florida and four other states, with railway, utility, municipal, and heavy-civil experience; project-management responsibility on projects up to approximately \$40 million; and engineering experience involving sheet-pile and soldier-pile shoring, temporary structures, jacking plans, concrete support systems, and foundations.
- Lance E. Shreffler, P.E., Gregori’s President, is a Professional Engineer licensed in Pennsylvania and has a bachelor’s and master’s degrees in civil engineering and extensive experience managing multi-office construction operations, project delivery, estimating, financial performance, equipment, and field personnel.

Beyond the engineers, the submitted resumes identified the following experience:

- Mike Gyure’s submitted resume identified his experience with 54-inch and 60-inch drainage-pipe work and projects involving deep structures, dewatering, water-quality controls, and excavation support.
- Andrew Gregori’s resume identified extensive excavation-shoring and temporary-works experience.
- Nathan Ferraro’s resume identified roadway, drainage, deep-excavation, and excavation-support responsibilities.

The original bid also contained equipment information and Great American Insurance Company’s May 27 bonding letter stating that Gregori’s program contemplated single projects exceeding \$40 million and aggregate programs exceeding \$60 million.

In other words, Gregori’s bid contained extensive information about its significant qualifications, and the City’s staff had that information when it determined Gregori was responsible and that its bid was responsive.

C. Railroad and Trenchless Experience Were Addressed in the Bid.

Please refer to Form 7.2; Seth Horwat resume; Form 7.9; pricing schedule.

Despite Masci’s assertion otherwise, Gregori’s bid did not ignore the railroad crossing. As discussed above, Seth Horwat’s submitted resume identified railway experience and railroad safety

training. Further, the questions asked by Gregori during the bidding process (discussed later herein) demonstrated a deep understanding of the complexities of underground work near railways.

With regard to experience with trenchless installations, Gregori's bid disclosed Huxted Trenchless as its subcontractor for the specialized 72-inch Casing Installation (J&B/Microtunneling) scope. The City's technical personnel were familiar with the proposed subcontractors and identified no disqualifying concern. In fact, the City's technical personnel were pleased with Gregori's choice of subcontractors.

Again, despite Masci's assertion otherwise, nothing in the ITB required a prime contractor to have previously worked with every proposed specialty subcontractor. Form 7.9 expressly allowed disclosure of whether prior experience together existed; it did not make prior teaming a condition of responsiveness or responsibility.

Masci also draws too sharp a distinction between jack-and-bore and microtunneling.

Section 15160 is entitled "Jack and Bore Installation," but states that casing beneath railroads may be installed by "jacking and augering or by jacking and mining." It requires a bentonite-and-water mixture during jacking to fill voids. That bentonite requirement is technically consistent with both the pipe-jacking and microtunneling family of trenchless construction. And, FHWA describes microtunneling as a remotely controlled, guided pipe-jacking process and, in a sample Florida specification, treats microtunneling as a hybrid of jack-and-bore for specification purposes. The same FHWA material identifies bentonite-slurry lubrication as a specific microtunneling requirement. ASCE defines microtunneling as using a remotely controlled boring machine, guidance system, a jacking system for thrust, and continuous face pressure.

The bentonite provision is therefore more consistent with guided pipe-jacking or microtunneling technology than with Masci's suggestion that the specification necessarily contemplated only conventional open-face auger boring.

Gregori does not contend that it was free to (or had any intent to) disregard the specifications or use an unapproved method. Gregori's proposal is directly consistent with the Project's specifications. Gregori took no exception and remains bound to perform the crossing in accordance with Section 15160, FEC requirements, approved submittals, and required engineering approvals. Huxted's capability in both jack-and-bore and microtunneling demonstrated that Gregori had identified a qualified trenchless specialist capable of performing the approved method.

D. Gregori's Pre-Bid Questions Demonstrated Risk Identification.

Masci argues that questions concerning railroad flagging, insurance, training, access, work windows, bypass conditions, permits, and existing infrastructure demonstrate Gregori's unfamiliarity with the type of work contemplated in the ITB. Masci is, again, mistaken.

Gregori was identifying cost, access, safety, and schedule risks before committing to a fixed price and asked questions demonstrating knowledge of the requirements of this type of construction. For example, Gregori asked whether FECR required continuous work during the crossing because

“[t]his has been required on other FECR projects.” Rather than express a lack of experience, that language demonstrates prior railroad experience and alerts other bidders of the nuanced scope for which accommodation should be made in pricing.

Also, Masci asserted that Gregori submitted questions to the City on May 15, that the City did not respond to those questions, and that Gregori bid the project anyway. In Masci’s interpretation, that would show that Gregori was simultaneously unknowledgeable (asking questions) and ill-informed (bidding without answers to those questions). Again, Masci is wrong.

Addendum No. 5, which both Masci and Gregori acknowledged receiving, was issued on May 29 specifically to address the May 15 questions (which had been omitted from an earlier addendum). Gregori therefore did not submit a qualified or uninformed bid. It obtained the City’s published answers, acknowledged all addenda, and took no exceptions.

E. Local Presence and Prior Cambridge Work Were Not Minimum Qualifications.

Masci argues that it is a local company and that Gregori is not and that Masci’s “localness” should control. While Masci’s Port Orange headquarters and prior work at the Cambridge facility may be relevant to Masci’s own responsibility, they do not establish that Gregori is nonresponsive or nonresponsible.

The ITB did not require a Port Orange headquarters, prior construction of the Cambridge facility, prior City work, or an office within a particular distance. Gregori accurately disclosed that it was not claiming the local-business preference.

Beyond being irrelevant, Masci’s assertions ignore the truth. Masci overstated (by nearly a factor of 2) the distance from Gregori’s Mims office to the Project. Also, the City has contracted with Gregori in the past (as it has with Masci). Thus, despite the disparity in “localness,” City staff had the benefit of its own knowledge of Gregori from working with Gregori. In that regard, Gregori requests that the City place into the record its prior contracts with Gregori and Gregori’s objective performance and completion information. In other words, the City Council should evaluate the City’s own institutional record rather than Masci’s (mis)characterization of Gregori as an unfamiliar out-of-area contractor.

F. Gregori Demonstrated Adequate Financial, Equipment, and Organizational Capacity.

Gregori’s original bid included a surety letter confirming a program contemplating individual projects exceeding \$40 million and an aggregate program exceeding \$60 million, a bid bond, a \$5 million line of credit, equipment information, experienced management personnel, and qualified subcontractors.

Masci provided similar information – just with numbers it claims are higher. However, the ITB did not require \$150 million in single-project bonding, a particular FDOT capacity score, a stated employee count, or ownership of every item of equipment that might be used. Knowing this, the City’s staff appropriately evaluated whether Gregori had sufficient resources—not whether Gregori’s company statistics equaled Masci’s. Thus, while Masci may have a larger current

workload that fact does not establish Gregori's inability to perform a \$14.4 million contract. Furthermore, contrary to Masci's assertion, Gregori maintains the same Drainage work certification at FDOT and Gregori's calculated maximum bid capacity for FDOT is \$259,950,000.00 - \$2.4 million **higher than** Masci's calculated maximum bid capacity.

G. Staff Review Should Not Be Replaced by a New Comparative Selection.

Masci contends that the bid tabulation proves the City performed only a ministerial checklist review because the tabulation contains "Y" and "N" entries rather than narrative findings.

Masci misses the mark yet again. The record shows that the Purchasing Agent tabulated the bids, the Purchasing Manager witnessed the tabulation, the City Engineer approved it, staff recommended Gregori for award, and the City Manager later denied Masci's protest. However, a tabulation sheet is not intended to contain the entirety of the City's technical and responsibility analysis.

The Purchasing Manual assigns review functions to Purchasing and the technical department precisely because those personnel possess procurement expertise and project-specific knowledge. They understand the Cambridge scope, know the relevant contractors and subcontractors, and are positioned to assess whether the experience, personnel, equipment, and financial resources described in a bid are adequate.

The City Council is free to inquire of its staff all steps undertaken to evaluate responsiveness and responsibility. The City Council is free to inquire of the City Manager's review of that process. The City Council retains full authority to review all of that work. But the sound exercise of that authority should also recognize the institutional competence of the professionals assigned to conduct the procurement on behalf of the City.

Masci should be required to identify an actual material requirement staff overlooked, an unsupported factual finding, or an unlawful criterion—not merely invite Council to reweigh the same qualifications and reach a different subjective preference. The present record identifies no such error. It identifies a disagreement with the staff's reasoned conclusion.

H. Masci's Public-Records Allegations Do Not Establish a Defect in Gregori's Bid.

A substantial portion of Masci's protest concerns its public-record requests and communications with the City concerning production.

Those issues do not establish that Gregori omitted a required bid term or that Gregori lacks the ability to perform. Gregori takes no position here on any separate Chapter 119 dispute but supports a complete Council record and written findings.

Any procedural remedy between Masci and the City related to post-bid inquiries should not be converted into a substantive finding against Gregori or a basis to invalidate a bid that was submitted and awarded prior to the events at the core of Masci's Chapter 119 complaints.

I. Masci's Comparative "Better Contractor" Argument Is Not the Published Standard.

Masci's protest ultimately asks the City to pay \$323,677 more because Masci has larger reference projects, greater FDOT capacity, more local experience, a larger fleet, more employees, and prior experience with Cambridge. While that argument might be relevant in a comparative RFP in which those factors were announced and scored, it does not fit this sealed-bid procurement. Staff was obligated to determine whether Gregori had sufficient ability, experience, resources, and reliability. Staff made that determination and reaffirmed it during the protest process. Once both bidders were deemed responsible with responsive bids, the ITB did not authorize a second competition to identify the comparatively "best" contractor.

GREGORI'S ORIGINAL BID CARRIES THE MERITS

Council need not rely on post-bid evidence to affirm Gregori. The sealed bid established that Gregori:

- completed the required forms and acknowledged all five addenda;
- took no exceptions;
- supplied the three required references;
- submitted resumes for the proposed team, including two professional engineers;
- demonstrated drainage, deep-excavation, dewatering, shoring, railway, and heavy-civil experience;
- disclosed Mersino/Ironclad for dewatering and bypass work and Huxted for the 72-inch casing installation;
- provided equipment information, financial information, bonding capacity, and bid security; and
- committed to perform the complete project for \$14,396,600.

The Purchasing Division and technical staff reviewed that record with knowledge of the project, contractors, and proposed subcontractors. Their conclusion that Gregori was responsive and responsible is supported by the bid itself.

LIMITED POST-BID RESPONSIBILITY VERIFICATION

Exhibit E to Masci's protest purports to be an FDOT capacity calculation reflecting a calculated maximum bid capacity of \$257,550,000. Masci uses that post-bid document to compare its capacity with Gregori's. The exhibit itself identifies its status as "PENDING SUBMITTAL." However, that document was not part of Masci's bid submittal package. Furthermore, as identified above, Gregori's calculated maximum bid capacity for FDOT is \$259,950,000 – which is \$2.4 million higher than Masci's.

While Gregori does not contend that Masci thereby waived public-bidding requirements, Masci has placed post-bid evidence regarding responsibility before the decision-makers and used it affirmatively against Gregori. Equal treatment requires that Gregori be permitted to rebut Masci's post-bid allegations with comparable responsibility-verification evidence.

In that spirit, and for purposes of this opposition to Masci's appeal, it is important to note that the attached letters from the City of Melbourne and DRMP are not substitute references created after bid opening. They were the three reference projects in Gregori's bid, selected because the underlying work demonstrated the technical judgment and risk management relevant to Cambridge. Their inclusion herein expressly rebuts Masci's mischaracterization of those projects and does not amend Gregori's bid, price, scope, schedule, exceptions, subcontractors, construction obligations or proposed contractual performance.

- The City of Melbourne verified that Gregori's work on the project referenced in its bid included a difficult lift-station replacement requiring bypass pumping of multiple active force mains, fabrication of an above-ground bypass manifold, maintenance of operations, and construction within a restricted footprint. Melbourne further confirmed safe performance, effective coordination, successful subcontractor management, work within contract value, and completion of one recent project 60 days ahead of schedule.
- DRMP verified its experience with Gregori on technically challenging deep stormwater and sanitary-sewer project (identified in the Gregori bid) involving high groundwater, restricted work areas, significant diversion of stormwater flows, deep sheet piling, wellpoint dewatering, and cofferdam systems. DRMP specifically identified groundwater and excavation support as issues capable of materially affecting project schedule and cost and confirmed Gregori's successful management of those risks.
- The referenced Seminole County project involved nearly 2,850 linear feet of 48-inch reinforced-concrete drainage pipe and junction structures. That is substantial large-diameter municipal drainage construction.

Additionally, the attached Chris Cawley/Norfolk Southern letter directly rebuts Masci's assertion that Gregori lacks railroad and jack-and-bore experience. Mr. Cawley confirms numerous jack-and-bore culvert replacements beneath active railroad tracks, deep open-cut railroad work, sheet-pile and soldier-pile construction, roadbed stabilization, bridge work under limited track curfews, and high-quality performance.

CONCLUSION

Masci's showing that it has substantial experience does not establish that Gregori lacks the experience and capacity to perform.

Gregori submitted a complete and unconditional bid. Its references demonstrated technically demanding municipal utility and drainage experience. Its bid contained the resumes of an experienced project team, including two professional engineers, together with relevant drainage, excavation, shoring, dewatering, railroad, and heavy-civil experience. It disclosed qualified specialty subcontractors, supplied equipment and financial information, and demonstrated surety capacity substantially exceeding the contract value.

The City professionals responsible for the procurement reviewed that information, recommended Gregori for award, considered Masci's protest, and rejected it. Their determination is consistent

with the solicitation and supported by the record. The City Council may appropriately affirm that work without converting this sealed-bid procurement into a new comparative selection based on criteria that were never published.

Gregori respectfully requests that the City Council:

1. Deny Masci's appeal;
2. Affirm Gregori's responsiveness;
3. Affirm Gregori's responsibility;
4. Reject Masci's proposed unstated comparative criteria;
5. Identify the evidence considered;
6. Issue written findings and a written final decision; and
7. Proceed with award to Gregori as the lowest responsive and responsible bidder.

Respectfully submitted on behalf of Gregori Construction, Inc., this 26th day of August, 2026,

WRIGHT, FULFORD, MOORHEAD & BROWN, P.A.

/s/ D. Frank Wright

D. FRANK WRIGHT, ESQUIRE

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August 10, 2026

Anthony McCall, CPP

City of Port Orange Finance Department

1000 City Center Circle

Port Orange, FL 32129

RE: RECOMMENDATION LETTER FOR GREGORI CONSTRUCTION, INC.

Mr. McCall,

As a continuing engineering services consultant for the City of Melbourne in Brevard County for the past 12 years, we have had the pleasure of working with Gregori Construction, Inc. (Gregori) on multiple deep stormwater and sanitary sewer projects. These projects are typically very challenging – they involve deep excavations in high groundwater conditions, with little available room for construction.

The stormwater projects have been large 3rd generation baffle box installations, either in the direct path of a significant drainage canal or large diameter storm pipes, requiring substantial diversion of stormwater flows to enable construction of these projects. The projects also involve deep sheet pile and well point system installations, to properly manage groundwater. This is probably the single most important aspect of these projects, and it is something that can have severe consequences to a project timeline and cost, if it is not performed properly. Gregori has demonstrated on every project, that they implement extremely effective stormwater diversion plans, dewatering plans to ensure “dry” installations, and professionally installed sheet pile/coffer dam systems that are safe and effective.

For over four decades we have designed multiple projects involving deep excavations and construction, and we have witnessed how an improper approach to project construction can adversely affect a project. Without exception, and on all the projects we have been involved in where Gregori Construction has been the contractor, they have performed the construction in an extremely efficient, professional and skilled manner. Accordingly, I highly recommend Gregori Construction for any project, especially for complex deep excavation projects.

Sincerely,

DRMP, Inc.

A handwritten signature in blue ink that reads 'Scott Nickle'.

Scott Nickle, VP



July 21, 2026

VIA EMAIL

RE: Letter of Reference for Gregori Construction, Inc.

To Whom It May Concern:

Gregori Construction, Inc. (GCI) has performed capital improvement projects construction for the City, including construction of three (3) recent lift station replacements.

Of particular note, GCI constructed the City's Lift Station No. 33 Replacement, a very challenging project which required temporary bypass pumping of multiple receiving force mains. GCI implemented a unique solution in fabricating an aboveground bypass manifold which was able to remain in operation throughout construction and provided GCI with the space necessary to construct the new station within a rather constrained footprint.

GCI has performed exceptionally well on our projects. In their latest project, Lift Station No. 42 Replacement, they reached substantial completion 60 days ahead of schedule. On each project they have completed the work within schedule. They have coordinated very well with the City, consultants, and permitting agencies throughout the construction sequence. They have managed their subcontractors well, operated safely, and performed the work within contract value.

I would recommend GCI to others for similar work. Should you have any questions or require any additional information, please don't hesitate to contact me by email at thomas.baker@mlbfl.org or by phone at (321) 608-5002.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Baker".

Tom Baker, P.E.
Public Works & Utilities Asst. Director



Office of Chief Engineer

Bridges and Structures
650 W Peachtree St NW
Atlanta, GA, 30308

July 2, 2026

To whom it may concern:

This letter is to validate that Gregori Construction has performed a broad variety of bridge, structure, and civil construction projects for Norfolk Southern Railway.

In the past 5 years, Gregori Construction has performed:

- Numerous jack-and-bore culvert replacements beneath Norfolk Southern's tracks through various soil types including solid rock, boulders, clay, and silty sand
- A 25-foot deep open-cut culvert replacement beneath Norfolk Southern's tracks
- Numerous bridge replacements in limited track curfews utilizing a variety of installation methods (cranes, SPMTs, slide-ins, etc)
- Numerous roadbed stabilization projects including rail/pile driving, embankment stabilization, and scour protection
- Retaining wall installation/replacements including a drilled soldier pile & plank wall, sheet pile walls, and redi-rock walls
- Installation of steel plate liner and corrugated plate liner arches inside of active stone masonry arches
- Numerous cast-in-place concrete rehabilitation projects of existing abutments, wingwalls, and retaining walls supporting active tracks or bridges
- Demolition of overhead bridges and structures crossing the tracks

Gregori's performance on their work for Norfolk Southern's bridges and structures department has been excellent and of high quality.

Sincerely,

Chris Cawley, PE
Director Engineering Structures
Norfolk Southern Railway

STATE OF FLORIDA
CITY OF PORT ORANGE

MASCI GENERAL CONTRACTOR, INC.

Petitioner,

v.

CASE NO:
ITB #26-06

STATE OF FLORIDA,
CITY OF PORT ORANGE

Respondent.

_____ /

PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

Masci General Contractor, Inc. ("MASCI") appeals the City Manager's July 29, 2026 denial of its bid protest, pursuant to Section 5, ¶ 87(c) of the Specifications.

MASCI files this appeal under protest and without waiver. MASCI submitted a public records request on June 18, 2026, the same day it filed its Notice of Protest. The City produced nothing for eight days, conditioned production on MASCI narrowing a facially valid request, characterized the request as a "fishing expedition," and delivered its first records at 5:02 p.m. on the business day before the formal protest was due. Additional records were produced only after payment and only after the City Manager had already denied the protest.

That injury is complete, and belated production does not cure it. *Daniels v. Bryson*, 548 So. 2d 679, 680 (Fla. 3d DCA 1989); *Grapski v. City of Alachua*, 31 So. 3d 193, 198 (Fla. 1st DCA 2010) ("the damage occurred when the City refused to produce the Minutes[;] production after the fact did nothing to mollify appellants' injury"). Where a public body acts while withholding the records that inform the action, the action is subject to being declared void. *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

Nothing herein waives any right, remedy, objection, or defense, including MASCI's claims under Chapter 119 and Article I, Sections 9, 21, and 24 of the Florida Constitution; its right to fees under § 119.12, Florida Statutes; and its right to appeal to the Circuit Court in and for Volusia County within thirty days of this Council's decision under Section 5, ¶ 87(c). MASCI reserves the right to supplement this appeal upon completion of the City's production.

I. THE ISSUE BEFORE THE COUNCIL

The City's own bid documents required a written determination that the successful bidder was the "lowest and best responsible Bidder," measured against ten enumerated factors, and required that each response be reviewed to confirm it "follows the requirements of the solicitation." Neither determination was ever made.

That is not MASCI's characterization. It is now the City's own confirmed position. In response to MASCI's direct inquiry, the Assistant City Manager confirmed on August 25, 2026 that the only responsive award document is the one-page Notice of Intent to Award, and that a Department Justification Memo produced in the records dump pertained to a *different procurement* and should be disregarded.

There is no justification memo for this project that has been produced to MASCI. There is no evaluation memorandum that has been produced to MASCI. There is no engineer's letter of recommendation that has been produced to MASCI. There are no written findings on any of the ten factors the solicitation required. There is a 24-box checklist and a one-page notice.

The consequence of performing no evaluation is that a bid which does not comply with the solicitation was never identified as such. MASCI asks the Council to correct that.

II. THE CITY DID NOT PERFORM THE REQUIRED EVALUATION

A. What the City's own practice looks like

In the City's public records production, received *after* the denial, MASCI received a Department Justification Memo prepared by the Engineering Department for ITB 20-16, Ridgewood Avenue Watermain Improvements - a \$543,228.56 watermain replacement project. That memo contains:

- A statement of the request and the purpose of the project;
- A "Consideration" section describing the existing conditions and the scope of work;
- A tabulation of all five bids received, by firm, location, and price;
- The statement: *"Staff conducted a thorough review of the firms qualifications and recommends award to 51 Site Services, Inc. as the lowest, best responsive bid."*;
- A written explanation of anticipated field conditions and a justification for a \$50,000 contingency;
- Complete funding detail, including fund, cost center, program, spend category, and budget;
- An anticipated schedule; and
- Attachments including the bid tabulation, the Letter of Recommendation of Award from the engineer of record (Mead & Hunt), the Notice of Intent to Award, and the successful bidder's bid submission.

That is what a Port Orange award recommendation looks like. That is the document that goes to Council.

B. What exists for this project

Nothing comparable exists for ITB #26-06.

When MASCI's counsel wrote on August 21, 2026 to ask where the justification memo or award recommendation for this procurement could be found, noting that the memo produced was for ITB 20-16, not 26-06, the City responded on August 25, 2026. The Assistant City Manager confirmed that the Notice of Intent to Award was the responsive record, and stated: *"Apologies on the memo that was attached that did not pertain to your request. You can ignore it."*

The City has thus identified, in writing, the complete universe of award-recommendation documents for this procurement. It consists of one page.

C. The comparison

	ITB 20-16	Ridgewood ITB #26-06	Cambridge Pump Station
Contract value	\$543,228.56		\$14,396,600.00
Federal funding	No		Yes (FEMA)
Railroad crossing	No		Yes — 72" bore under FEC Railway
Department Justification Memo	Yes		None
Written statement that staff reviewed qualifications	Yes		None
Engineer's Letter of Recommendation of Award	Yes		None
Written funding / contingency analysis	Yes		None
Total written award justification	Multi-page attachments	memo +	One page

The City of Port Orange produced more written justification to its Council for a half-million-dollar watermain replacement than it has produced for a fourteen-million-dollar flood control reconstruction beneath an active railroad, funded by FEMA.

D. What this means legally

The deference the City Manager's denial invokes protects "the honest exercise of ... discretion." *Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). But that discretion "may not be exercised arbitrarily or capriciously" and "must be based upon facts reasonably tending to support the conclusions reached by such agency." *City of Pensacola v. Kirby*, 47 So. 2d 533, 536 (Fla. 1950); *accord Mayes Printing Co. v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963).

Compare a responsibility determination Florida courts have upheld: in *Baxter's Asphalt & Concrete, Inc. v. Department of Transportation*, 475 So. 2d 1284, 1286 (Fla. 1st DCA 1985), the agency investigated the bidder's performance on six specific projects, developed an evidentiary record, and issued a written order that "expose[d] and elucidate[d] its reasons for its discretionary action."

The City Manager's denial states that "[t]he substantive evaluation of qualifications and responsibility is reflected in the award recommendation." The award recommendation — which the City has now confirmed is the one-page Notice of Intent to Award — states in its entirety: "*After review of the responses, City Staff has made a recommendation to award to the following firm.*" The same notice reports that the City received "*five (3)*" bid submittals. It received three. A city that reserves discretion and never exercises it has not made a judgment entitled to deference. It has made no judgment at all.

III. THE SOLICITATION REQUIRED THE EVALUATION THAT WAS NEVER PERFORMED

A. Section 5, ¶ 31 — mandatory, and a bid specification

Section 5, ¶ 31 of the Specifications is captioned "DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER" and provides that "[i]n determining the lowest and best responsible Bidder, in addition to price, there will be considered the following," listing ten factors, including:

a. The ability, capacity and skill of the Bidder to perform the contract. b. Whether the Bidder can perform the contract within the time specified, without delay or interference. c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder. d. The quality of performance of previous contracts. f. The sufficiency of the financial resources and ability of the Bidder to perform the contract. g. The quality, availability and adaptability of the ... contractual services to the particular use required. j. **Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.**

This is mandatory language, "there will be considered," and the City placed it in the solicitation itself, not merely in the Code. Every bidder was on notice that award would turn on price *and* on ten qualitative factors, and bidders prepared accordingly.

Factor (j) is addressed to this Council by name. The solicitation expressly commits to "the city council" the weighing of factors "pertinent to the bid or the contract under all of the circumstances involved." The Council is not being asked to invent authority or to second-guess staff expertise. The bid documents assign this judgment to the Council.

No written findings exist on any of the ten factors. A checklist confirming that documents are present does not consider ability, capacity, skill, or experience. It counts.

B. Section 5, ¶ 86 — responsiveness requires compliance with the solicitation

Section 5, ¶ 86 provides:

"A responsive response is one which follows the requirements of the solicitation, includes all required documentation, is submitted in the format outlined in the solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your response non-responsive."

The definition has five conjunctive elements. The first, "follows the requirements of the solicitation," is substantive and is listed separately from "includes all required documentation." If the two meant the same thing, the first would be surplusage.

The Bid Tabulation Sheet tests only whether documents were present. Nothing in the record reflects any determination whether any response "follows the requirements of the solicitation." The City wrote a five-part responsiveness test and administered one part of it. It wrote a ten-factor responsibility test and administered none of it.

IV. GREGORI'S RESPONSE DOES NOT FOLLOW THE REQUIREMENTS OF THE SOLICITATION

Form 7.8 required three references demonstrating that the bidder "has successfully done so on recent projects similar in nature and size," and instructed bidders to provide references "for similar services."

Gregori's three references, in Gregori's own words on its own Form 7.8:

# Client	Description as written by Gregori	Value
1 City of Melbourne	"Complete SS Lift Station Replacement"	\$2,795,000
2 DRMP / Brevard County	"Brevard County – S19 – Complete Lift Station Replacement "	\$1,285,000

# Client	Description as written by Gregori	Value
3 Seminole County	"2848 LF of 48" RCP & Junction Boxes"	\$2,061,225

They are not similar in nature. Whatever else may be debated, a *sanitary sewer* lift station replacement is not a *storm drainage* pump station reconstruction. Nor is the third reference similar. A \$2 million, 48-inch reinforced concrete pipe installation with junction boxes is a linear drainage installation. It is not a pump station reconstruction, it involves no jack-and-bore, no railroad crossing, no outfall structure, and no structural platform.

None of the three references involves any of the defining elements of this project:

☐ A storm drainage pump station ☐ Jack-and-bore installation ☐ Work on or beneath railroad right-of-way ☐ An outfall structure ☐ A structural platform ☐ Reconstruction of an operating flood control facility. And none is similar in size: the largest is 19% of this contract's value; Gregori's largest active project of any kind, per its own Attachment F, is \$3,797,797 — approximately one quarter of this contract.

The City Manager's denial responds that Form 7.8 "does not define 'similar' with mathematical precision, nor does it require that reference projects be identical." MASCI has never argued the references must be *identical*. MASCI argues they must be similar which is the word the City chose. Where a solicitation term is undefined, it carries its ordinary meaning: "having characteristics in common: strictly comparable"; "alike in substance or essentials: corresponding." *Merriam-Webster Dictionary*. And to the extent the City now says the term is ambiguous, that ambiguity is the City's own, and is construed against the drafter. Additionally, in *Aurora Pump, Div. of General Signal Corp. v. Goulds Pumps, Inc.*, the Court encouraged public agencies to avoid these types of ambiguities:

Instead, those who we hope to encourage are the public agencies and authorities to responsibly prepare and disseminate clear and precise bidding instructions so the public may be protected against collusive contracts; to secure fair competition upon equal terms to all bidders; and to remove temptation for favoritism and fraud at the public expense. *Wester v. Belote*.

If sanitary sewer lift station replacements are "similar in nature" to this project, then *any* three references of *any* kind satisfy Form 7.8, and the requirement is surplusage. That is not interpretation. It is deletion — and a public body "is not entitled to omit or alter material provisions required by the [solicitation]." *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 652 (Fla. 1st DCA 2007) (quoting *State, Dep't of Lottery v. Gtech Corp.*, 816 So. 2d 648 (Fla. 1st DCA 2001)).

Florida law expressly preserves the City's authority to act. Section 255.20(1)(d)1., Florida Statutes, provides that competitive bidding requirements are "not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder." The Fourth District affirmed exactly such a rejection in *American Engineering & Development Corp. v. Town of Highland Beach*, 20 So. 3d 1000, 1001 (Fla. 4th DCA 2009), where the low bidder "did not list projects performed for municipalities or projects on which it was the prime contractor, as the bidding specifications required." Rejecting a nonconforming low bid is not legal risk. Awarding to one is.

V. THE DENIAL'S KEY AUTHORITY IS INAPPLICABLE BY ITS OWN TERMS

The denial's responsiveness holding rests on *Intercontinental Props., Inc. v. State Dep't of Health & Rehabilitative Servs.*, 606 So. 2d 380 (Fla. 3d DCA 1992), cited for the proposition that "[m]inor variations or matters of degree in the qualitative assessment of references do not render a bid non-responsive."

Intercontinental contains no such holding. It is a lease-of-office-space case about a signature technicality: the low bidder's agent failed to attach documentation of her authority to bind the property owner, and the bid was held responsive because the authority always existed and the omission was cured at the hearing. The opinion says nothing about references. More fundamentally, the court did not announce a general rule. It applied *the definition contained in that solicitation*: "Under the Invitation to Bid, 'responsive' refers only to matters of form. A responsive bid means that a bid is submitted on the correct forms, and contains all required information, signatures, and notarizations." *Id.* at 381 (emphasis added).

Port Orange's ¶ 86 is broader by its own terms, and ¶ 31 mandates a ten-factor qualitative analysis that solicitation did not contain. The City drafted a broader standard than the one in the case it cites, and now invokes that case to avoid enforcing the standard it drafted. *Intercontinental* cuts against the City twice more. It distinguishes curable technical omissions from substantive deficiencies — and Gregori's deficiency cannot be cured; the experience either exists or it does not. And it recites the *Baxter's Asphalt* waiver standard: an irregularity may be waived only where no competitive advantage accrues to the low bidder. Relieving one bidder of the obligation to demonstrate comparable experience confers competitive advantage by definition. The City's Procurement Manual further requires that any waiver be documented and "clearly noted in award recommendations submitted to Council." No waiver was documented. None was noted. Under the City's own Manual, none was granted.

VI. GREGORI'S OWN QUESTIONS CONFIRMED ITS UNFAMILIARITY — IN THE CITY'S FILE, BEFORE THE AWARD

Between March 31 and May 27, 2026, Gregori submitted written pre-bid questions to City staff, including:

- *"What railroad trainings are required to work on railroad property?"*
- *"Is Railroad Protective Liability Insurance required?"*
- *"Who is the FECR railroad point of contact?"*
- *"Who built the original pump station? Are there as-builts?"*

Railroad Protective Liability Insurance is universally required for work on or adjacent to active railroad right-of-way. A contractor that must ask whether it applies has not performed railroad work. The most hazardous, critical-path element of this project is boring a 72-inch casing beneath an active FEC main line. Gregori also twice requested extensions of the bid deadline, six weeks in total, and submitted technical questions on May 15 that it followed up on twice, on May 26 and May 27, with no indication in the record that they were answered before the June 5 bid deadline. Gregori bid anyway.

And the answer to Gregori's question — *who built the original pump station?* — is MASCI. The denial recasts these as "diligence." Diligence is asking about elevations, quantities, geotechnical data, and permit fees, which Gregori also did. Asking whether a universally required insurance product applies to railroad work is not diligence. It is unfamiliarity, documented in writing, in the City's own procurement file, weeks before the award recommendation issued — and no one connected it to a responsibility determination, because no responsibility determination was made.

VII. THE BONDS DO NOT "ELIMINATE THE RISK," AND FEMA IS UNADDRESSED

The denial asserts that Gregori's bonds "eliminate[] the risk to the City." Bonds compensate the City after a default. They do not prevent the default, the delay, the change orders, or the months an unfinished flood control station spends unable to protect the Cambridge basin during storm

season. On flood control infrastructure, schedule risk *is* flood risk, and no surety underwrites the weather.

VIII. RELIEF REQUESTED

MASCI respectfully requests that the City Council:

1. Sustain this appeal and reject Gregori's bid as non-responsive under Section 5, ¶ 86 for failure to follow the requirements of the solicitation, and as not the "lowest and best responsible Bidder" under Section 5, ¶ 31;
2. Award ITB #26-06 to MASCI as the lowest responsive and responsible bidder;
3. In the alternative, decline to approve the award and direct staff to conduct and document the evaluation required by Section 5, ¶¶ 31 and 86, with written findings on each of the ten factors, before any recommendation returns to Council; or reject all bids and rebid, *see Gtech*, 816 So. 2d at 651;
4. Grant such further relief as is just.

IX. STATEMENT REGARDING PROJECT COST — SUBMITTED SEPARATELY AND NOT AS PART OF THE FOREGOING

This section is severed from Sections I through VIII and forms no part of MASCI's legal position. The Council may not, and MASCI does not ask it to, consider anything in this section in determining whether Gregori's bid is responsive or whether Gregori is the lowest and best responsible bidder. Those questions are governed solely by the solicitation documents, Section 2-266, and Florida law, and their answers do not change by one word regardless of what follows.

MASCI is a Port Orange business. It understands that this Council answers to taxpayers and that the difference between the bids , \$323,677 or 2.25%, is real money. MASCI therefore

states, for the Council's information only: if the City does what the law requires and this contract is lawfully awarded to MASCI, MASCI is prepared, after execution, to work with the City through lawful means, including value engineering and a deductive change order, to bring the project cost to the level of the low bid.

This statement is made subject to three express conditions:

- It is not a bid modification. MASCI's bid is and remains \$14,720,277.
- It is not an inducement or consideration for award. MASCI's entitlement rests entirely on Gregori's non-compliance with the solicitation. If the Council concludes otherwise, this statement changes nothing.
- Any reduction would occur only after contract execution, only through lawful contractual mechanisms, and only at the City's option.

MASCI offers this only so that the City's compliance with its own solicitation does not come at a cost to Port Orange taxpayers. The Council should decide the legal questions first, on the law and the record, without reference to this section.

RESERVATION OF RIGHTS

MASCI files this appeal under protest and without waiver and reserves all rights, remedies, objections, and defenses, including the right to supplement upon completion of the City's public records production; to appeal this Council's decision to the Circuit Court in and for Volusia County within thirty days pursuant to Section 5, ¶ 87(c); to seek certiorari, declaratory, injunctive, and mandamus relief; to pursue all claims under Chapter 119 and Article I, Sections 9, 21, and 24 of the Florida Constitution; and to seek fees under § 119.12, Florida Statutes.

Respectfully submitted,

/s/ Sean W. Gellis
SEAN W. GELLIS
Gellis Law, PLLC

Florida Bar No. 105924
2931 Crawfordville Hwy
Crawfordville, FL 32327
(561) 371-2848
sean@gellislaw.com
Attorney for Petitioner

INDEX OF EXHIBITS TO APPEAL TO CITY COUNCIL

Preservation. Masci General Contractor, Inc. (“MASCI”) hereby incorporates by reference, and re-files herewith, the complete record of its Formal Written Bid Protest dated June 28, 2026, together with all exhibits thereto. MASCI does not waive, and expressly preserves, every argument, fact, document, and legal authority contained in or submitted with the Formal Written Bid Protest, its Notice of Protest dated June 18, 2026, and all related correspondence, whether or not repeated in this appeal. MASCI further reserves the right to supplement this Index and the record upon completion of the City’s production of public records responsive to MASCI’s June 18, 2026 request.

A. Record Incorporated from the Formal Written Bid Protest

Exhibit	Document
A	ITB #26-06, Cambridge Pump Station Upgrades (solicitation as posted March 27, 2026), including all Addenda Nos. 1–5
B	Gregori Construction, Inc. bid submittal (complete, as produced by the City)
C	Composite of Gregori Construction, Inc. pre-bid question emails to City staff, March 31, 2026 through May 27, 2026
D	ITB #26-06 Bid Tabulation Sheet
E	MASCI Florida Department of Transportation Certificate of Qualification and maximum bid capacity documentation

B. Exhibits Filed with This Appeal

Exhibit	Document
A-1	City Manager’s Response to Masci Formal Bid Protest, dated July 29, 2026 (decision under appeal)
A-2	Notice of Intent to Award, ITB #26-06, dated June 16, 2026
A-3	ITB #26-06 Bid Tabulation Sheet, opened and tabulated June 16–17, 2026

A-4	Department Justification Memo — Intent to Award, ITB 20-16, Ridgewood Avenue from Farmbrook Road to Niver Street Watermain Improvements Project (produced by the City in response to MASCI’s public records request)
A-5	Email chain regarding award documentation: S. Gellis to M. Jones, August 21, 2026; R. Fenwick to S. Gellis, August 25, 2026 (City confirmation that the ITB 20-16 memorandum “did not pertain to your request” and that the Notice of Intent to Award is the responsive record)
A-6	ITB #26-06 Specifications
A-7	Form 7.8, Professional References for Previous Experience, as submitted by Gregori Construction, Inc.
A-8	Form 7.8, Professional References for Previous Experience, as submitted by MASCI
A-9	Gregori Construction, Inc. Attachment F — Current and Projected Workload
A-10	Gregori Construction, Inc. Form 7.9 — Listing of Subcontractors
A-11	Section 2-266, Code of Ordinances, City of Port Orange
A-12	City of Port Orange Procurement Manual, pp. 21–23 (Tabulation/Evaluation; Evaluation of Responses; Waiver of Irregularities; Rejection of Solicitation Responses)

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement
- ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ☒ Form 7.4 – Drug Free Preference Statement
- ☒ Form 7.5 – Public Entity Crimes Statement
- ☒ Form 7.6 – Anti-Collusion
- ☒ Form 7.7 – Statement of Bidder's Qualifications
- ☒ Form 7.8 – Professional References for Previous Experience
- ☒ Form 7.9 – List of Subcontractors
- ☒ Form 7.10 – Scrutinized Companies Certification
- ☒ Form 7.11 – Local Business Affidavit of Eligibility
- ☒ Form 7.12 – E-Verify Affidavit & Proof of Registration
- ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ☒ Form 7.14 – Affidavit of Compliance With F.S. 287.138
- ☒ Form 7.15 – No Submittal Response
- ☒ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
- ☒ (Attachment 1) – Schedule of Unit Pricing
- ☒ **Current Bonding Capacity Letter (as outlined in Section 6)**
- ☒ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ☒ Current Tax Receipt of Bidder's municipality
- ☒ **Original Bid Bond** or certified check or bank draft (as outlined in Section 6)
- ☒ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: Gregori Construction Inc.

Name of Business



Authorized Signature

6/4/26

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

Gregori Construction Inc.
Name of Business

[Signature]
Authorized Signature

Nathan Ferraro, Southern Regional Manager
Printed Name and Title

23-2938638
Federal Identification No.

3067 US Highway 1
Mailing Address

Mims, FL 32754
City, State & Zip Code

321-607-6160
Telephone Number

nferraro@gregori-inc.com
E-mail Address

STATE OF: Florida COUNTY OF: Brevard

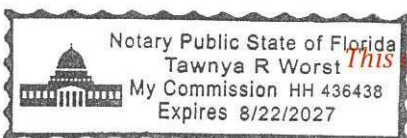
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this

4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Jawnyal Worst Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 1 Date: April 14, 2026 Addendum# 3 Date: May 22, 2026 Addendum# 5 Date: May 29, 2026

Addendum# 2 Date: May 8, 2026 Addendum# 4 Date: May 27, 2026

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Gregori Construction Inc.

Name of Business



Authorized Signature

Nathan Ferraro, Southern Regional Manager

Printed Name and Title

STATE OF: Florida COUNTY OF: Brevard

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

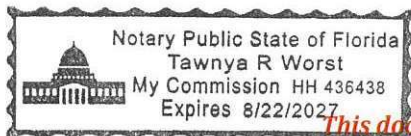
4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.



Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

Gregori Construction Inc.

Name of Business



Authorized Signature

Nathan Ferraro, Southern Regional Manager

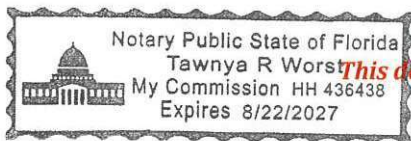
Printed Name and Title

STATE OF: Florida COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

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



This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

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

1. The business address of Gregori Construction Inc. (name of Offeror or business) is
3067 US Highway 1 Mims, FL 32754.
2. My relationship to Gregori Construction Inc. (name of Offeror or business) is
Southern Regional Manager (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is:~~
~~_____.~~ A copy of the order of the Division Administrative Hearing is attached.
(Draw a line through paragraph 7 if paragraph 6 above applies)

Gregori Construction Inc.
Name of Business

[Signature]
Authorized Signature

Nathan Ferraro, Southern Regional Manager
Printed Name and Title

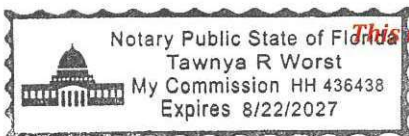
STATE OF: Florida

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this
4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

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



This document must be completed and returned with your Submittal

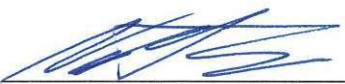
FORM 7.6 – ANTI-COLLUSION

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

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

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

NAME OF FIRM: Gregori Construction Inc.

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

PRINTED SIGNATURE: Nathna Ferraro

TITLE: Southern Regional Manager

ADDRESS: 3067 US Highway 1

CITY, STATE AND ZIP CODE: Mims, FL 32754

TELEPHONE: 321-607-6160

F.E.I.N.: 23-2938638

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: Gregori Construction Inc.
- B. Permanent main office address: 736 Ekastown Rd Sarver, PA 1605
- C. Date organized: 1989
- D. If a corporation, where incorporated: Pennsylvania
- E. How many years have you been engaged in the business under your present firm or trade name? 36 Years
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: Heavy Highway, Heavy Civil, Utility
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No
- I. Have you ever defaulted on a contract? If so, where and why? No
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ \$5,000,000.00
- M. Give bank name, contact name and phone number: See attached Application For Credit

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

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

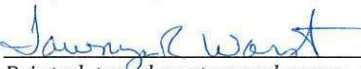
Gregori Construction Inc.
Name of Business

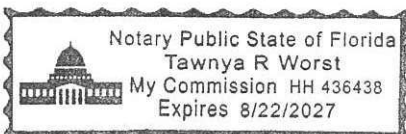
Authorized Signature
Nathan Ferraro, Southern Regional Manager
Printed Name and Title

STATE OF: Florida
COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.


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



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Current and Projected Workload

Project	Client	Commencement & Completion	Amount
Pluckebaum Rd. Stormwater	Brevard County	06/2026-05/2027	\$3,797,797.00
Apogee Road	Kennedy Space Center	05/2025-06/2026	\$251,300.00
CT-6 East Garage	GC: Ivey's Construction Inc. Owner: Canaveral Port Authority	05/2026-10/2026	\$1,333,000.00
BCF Ruby St. Stormwater Improvement	GC: Heard Construction Inc. Owner: Brevard County Facilities	06/2026-10/2026	\$560,575.00
Florida Shores, Beach Ramp/Seawall	Volusia County	10/2026-03/2027	\$1,676,000.00
Lift Station 42 Melbourne	Owner: City of Melbourne	11/2025-6/2026	\$697,525.00
Pinto Way	Orange County	06/2026-10/2026	\$1,115,530.00
Burnett Rd. Stormwater	Brevard County	06/2026-12/2026	\$2,550,055.00
Relocate Weather Ops	GC: CCI Utility & Construction Services Owner: CC Space Force	01/2027-07/2027	\$1,077,407.00
El Portal Beach Ramp/ Seawall	Volusia County	10/2026-02/2027	\$743,365.00
Playalinda Beach Platform	GC: CORE Engineering Owner : Kennedy Space Center	05/2026-08/2026	\$251,389.00
Volusia Seawalls	Volusia County	06/2026-10/2026	\$1,654,000.00
Indian Harbour Baffle Box	City of Indian Harbor	05/2026-08/2026	\$1,137,900.00
Culvert Repairs	GC: Aleut Federal Owner: Kennedy Space Center	05/2026-08/2026	\$631,000.00

Gregori Construction Equipment list

Equipment	Serial	Unit #	Make	Model	Year
B3 Caterpillar 430D Caterpillar 430D	BNK06326	B3	Caterpillar	430D	
C9 Atlas Copco 185 Air Compressor 2015 Atlas Copco XAS 185 CD 7	HOP050775	C9	Atlas Copco	XAS 185 CD 7	2015
D09 CAT D3 LGP Tractor CAT D3K2LGPCAB	KL207748	D09	CAT	D3K2LGPCAB	
DT9 Freightliner M2106 Dump Truck Freightliner M2106	HHJD5408	DT9	Freightliner	M2106	
DT10 2020 Peterbuilt 567 dump truck	INPCL40X0LD614058	DT10	Peterbuilt		567 2020
DT14 2026 Peterbuilt 567 dump truck	INPCX4EX5TD783778	DT14	Peterbuilt		567 2026
E05 Komatsu PC150-6K Excavator Komatsu PC150-6K	K34039	E05	Komatsu	PC150-6K	
E09 Komatsu PC400LC-8 Excavator Komatsu PC400LC-8	A88451	E09	Komatsu	PC400LC-8	
E20 Caterpillar 316E Excavator 2015 Caterpillar 316E Excavator	DZW02315	E20	Caterpillar	316E Excavator	2015
E22 Caterpillar 304E2CR Excavator 2016 Caterpillar 304E2CR	ME401697	E22	Caterpillar	304E2CR	2016
E23 Caterpillar 305.5E Excavator 2017 CAT 305.5E	CR502785/20276/065121	E23	CAT	305.5E	2017
E26 Bobcat 329 Mini Excavator 2006 Bobcat 329	A2PG11254	E26	Bobcat		329 2006
E29 CAT 305.5E Mini Excavator CAT 305.5E	CR504948	E29	CAT	305.5E	
E31 CAT 315FL Hydraulic Excavator Caterpillar 315FL	IDY12123	E31	Caterpillar	315FL	
E39 2021 Komatsu Hydraulic Excavator 2021 Komatsu PC390LC-11	A30674	E39	Komatsu	PC390LC-11	2021
E40 2023 Caterpillar Hydraulic Excavator 304-07 2023 Caterpillar	AN402793	E40	Caterpillar		2023
E41 2024 Komatsu PC490	A44051	E41	Komatsu	PC490	2024
E44 John Deere 30G Mini Excavator		E44			
FT1 FG 30 Loader FG FG 30	304673	FT1	FG	FG 30	
H10 6in RotoFlo Pump 2021 RWP006 MWI RotoFlo	14973	H10	MWI RotoFlo		
H11 6in Pump Centrif HC551/32 2023 Hudig HC551/32	24358	H11	Hudig	HC551/32	2023
H12 BA150E D285 MP100 6" PUMP on Trailer BBA	21060750	H12	BBA		
H4 Thompson 8" Wellpoint Pump 8JSVW-DJDST-45D Thompson 8JSVW-DJDST-45D	IT9BH13219P634632	H4	Thompson	8JSVW-DJDST-45D	
H5 Gorman Rupp 4" Pump Gorman Rupp 4" Pump	350F201	H5	Gorman Rupp	4" Pump	
H6 Thompson Jet Pump 4" 4JCA-DJDST-45T Thompson Jet Pump	173807	H6	Thompson	Jet Pump	
H7 Thompson 6in Piston Well Pump 2016 Thompson 6in Piston Wellpump	6PW-DHS-1D81Z-SK	H7	Thompson	6in Piston Wellpump	2016
H8 2013 Pump BBA 6" PT90 2013 BBA PT90	13-2747	H8	BBA	PT90	2013
H9 8in 2013 Thompson Pump 2013 Thompson 8RW-DJDS-45D-MC	W546	H9	Thompson	8RW-DJDS-45D-MC	2013
HM7 HPSI 150 Vibratory Hammer HPSI 150 HAMMER	1055/1056	HM7	HPSI	150 HAMMER	
HM17 Deawson EMV-70 Excavator mounted hammer	70-060	HM17	Dawson	EMV-70 Hammer	
HM18 Caterpillar LT 118 Tiller	N7X00577	HM18	CAT	LT118 TILLER	
L04 JLG Sky Trak 6042 Loader 2007 JLG Sky Trak 6042	160026211	L04	JLG	Sky Trak 6042	2007
L06 John Deere 204KXT Loader 2015 John Deere 204KXT Loader	1LU204KXPZB038271	L06	John Deere	204KXT Loader	2015
L10 L10 Komatsu WA270-8 Loader Komatsu WA270-8	A28772	L10	Komatsu	WA270-8	

L12 Caterpillar 938M Wheel Loader 2019 Caterpillar	J3R07551	L12	Caterpillar		2019
L13 2023 Komatsu WA 320-8 Wheel Loader 2023 Komatsu WA320-8	87197	L13	Komatsu	WA320-8	2023
Equipment	Serial	Unit #	Make	Model	Year
LP6 Terex AL4000 Light Plant TEREX AL4000	AL409-236	LP6	TEREX	AL4000	
MG1 2019 John Deere 670G Motor Road Grader 2019 John Deere 670G	IDW670GPKCF694692	MG1	John Deere	670G	2019
P50 Dodge 5500 Pickup Truck 2015 Dodge 5500	3C7WRNELL1GG162678	P50	Dodge		5500 2015
P53 Dodge Ram 4500 Pickup Truck 2016 Dodge RAM 4500	3C7WRLLEL3GG224859	P53	Dodge RAM		4500 2016
P57 Dodge Ram 2500 Pickup Truck 2017 Dodge Ram 2500	3C6UR5HL5HG502147	P57	Dodge	Ram 2500	2017
P59 Chevrolet Silverado 2500 HD Pickup Truck 2016 Chevrolet Silverado 2500 HD	1GCKUEG4GF228960	P59	Chevrolet	Silverado 2500 HD	2016
P73 2019 RAM 2500 2019 Dodge 2500	3C6UR5DJ1KGG611023	P73	Dodge		2500 2019
P79 2015 Ford F550 2015 Ford F550	1FD0W5HT7FEA54249	P79	Ford	F550	2015
P88 2022 Ram 2500 2022 DODGE 2500 HD	3C6UR5HJ5NG101515	P88	DODGE	2500 HD	2022
P89 2022 RAM 2500 4x4 crew cab 8 ft bed 2022 Dodge RAM Ram 2500	3C6UR5HJ4NG202190	P89	Dodge RAM	Ram 2500	2022
P96 2022 RAM2500 2022 Dodge RAM 2500	3C6UR5HJ9NG263499	P96	Dodge RAM		2500 2022
P98 Ram 2500 2023 RAM 2500 HD Crew cab	3C6UR5HJ8PG610033	P98	RAM	2500 HD Crew cab	2023
P109 Ram 2500 2024 RAM 2500 HD Crew cab	3C6UR5HL0RG368116	P109	RAM	2500 HD Crew cab	2024
P110 Ram 2500 2024 RAM 2500 HD Crew cab	3C6UR5HL2RG368117	P110	RAM	2500 HD Crew cab	2024
P111 Ram 1500 2024 RAM1500 Crew Cab	1C6SRFFT8RNI50688	P111	RAM	1500 Crew Cab	2024
P114 Ram 2500 2024 RAM 2500 HD Crew Cab	3C6R5DI18SG527844	P114	RAM	2500 HD Crew Cab	2025
P116 Ram 2500 2026 RAM 2500 HD Crew Cab	3C6UR5HJ5TG237284	P116	RAM	2500 HD Crew cab	2026
PB4 Power Broom Power Broom Power Broom	924104	PB4	Power Broom	Power Broom	
PB6 Highway Broom 3 WHL. w/o Cab Laymor SM300	35555	PB6	Laymor	SM300	
PB7 Terramite Commander 8 Broom Terramite Commander 8		PB7	Terramite	Commander 8	
PV4 Lee-Boy 8500 Asphalt Paver 2002 Lee-Boy 8500 Paver	2903HD	PV4	Lee-Boy	8500 Paver	2002
PV5 Lee-Boy Asphalt Paver 2017 Lee-Boy 250 Gallon Tack Tank	1B9AA1116H1309211	PV5	Lee-Boy	250 Gallon Tack Tank	2017
PV6 Caterpillar PC306B Paver 2017 Caterpillar PC306B	0PCT01689	PV6	Caterpillar	PC306B	2017
PV7 Lee-Boy 8520B Paver Lee-Boy	8520285084	PV7	Lee-Boy		
R11 2023 Bomag 154 AD-5 Smooth Drum Roller 2023 Bomag 154 AD-5	1.01922E+11	R11	Bomag	154 AD-5	2023
R6 Wacker RD12A Roller 2010 Wacker RD12A	5920804	R6	Wacker	RD12A	2010
R7 2014 Hamm HD12VV Roller 2014 Hamm HD12VV	H2004102	R7	Hamm	HD12VV	2014
R8 Hamm H 7i Hamm H 7i	H2222254	R8	Hamm	H 7i	
S03 New Holland LS190 skid Steer New Holland LS190	195808	S03	New Holland	LS190	
S11 Bobcat T870 Track Loader Skid Steer 2017 Bobcat T870 Track Loader	ASWT12381	S11	Bobcat	T870 Track Loader	2017
S12 Bobcat T595 Skid Steer 2018 Bobcat T595	M0249	S12	Bobcat	T595	2018
S15 2023 Caterpillar Compact Track Loader 299D3XE 2023 Caterpillar 299D3XE	BX906838	S15	Caterpillar	299D3XE	2023
S19 Kubota SVL97 Skidsteer	KBCZ065CT1B20633	S19	Kubota	SVL97	2026
T30 2024 Big Tex Flatbed Gooseneck Trailer 2024 Big Tex Big Tex	16V3F3820R6343523	T30	Big Tex	Big Tex	2024
T34 Multiquip Water Trailer 2015 Multiquip Water Trailer 500 gal.	4GNBM1226FB040586	T34	Multiquip	Water Trailer 500 gal.	2015

T35 Eager Beaver Trailer 2006 Eager Beaver Trailer	112H8V3256L071945	T35	Eager Beaver	Trailer	2006
T38 Bend Trailer 2012 Bend	5U7BE2821CDO19235	T38	Bend		2012
Equipment	Serial	Unit #	Make	Model	Year
T40 PJTM Trailer 2005 PJTM Trailer	4P5DE202051069021	T40	PJTM	Trailer	2005
T44 Florida Trailer 2018 Trailer Big Tex 14TL-22	2032961	T44	Trailer	Big Tex 14TL-22	2018
T46 ARNG 8.5 x 20NC Trailer 2018 ARNG 8.5X20ENC	5YCBHE2024IH052446	T46	ARNG	8.5X20ENC	2018
T48 2019 Big Tex 20 Ft Trailer 2019 Big Tex Big Tex	16VEXX2025K2001266	T48	Big Tex	Big Tex	2019
T49 Pace Tool Trailer (green) 1999 Pace Trailer	4FPFB1015XG031596	T49	Pace	Trailer	1999
T55 Rock Solid Cargo Trailer 8x20 2021 Rock Solid		T55	Rock Solid		2021
T56 Rock Solid Cargo Trailer 8x20 2021 Rock Solid Cargo		T56	Rock Solid	Cargo	2021
T59 2022 Dorsey Equipment Trailer 2022 Dorsey LB 35-33CS	7KYL1B3527NPPD32370	T59	Dorsey	LB 35-33CS	2022
T64 2022 USA Cargo Enclosed 20ft Trailer 2022 USA Cargo	43864	T64	USA Cargo		2022
T70 2024 Big Tex Flatbed Gooseneck Trailer 2024 Big Tex	16V3F820R6343523	T70	Big Tex		2024
T71 2024 AMP Dump Trailer 7 x 14 2024 AMP		T71	AMP		2024
T82 Covered Wagon Trailer 8.5x20 cargo trailer	53FBE2024TF111367	T82	CW	CARGO	2026
T83 Covered Wagon Trailer 8.5x20 cargo trailer	53FBE2024TF111368	T83	CW	CARGO	2026
TR3 Peterbilt 379 Tri-day Cab Tractor 2007 Peterbilt Tractor 379 Tri day cab	1XP5DBEXX7N649845	TR3	Peterbilt	Tractor 379 Tri day cab	2026
UV03 2007 F650 Flat Bed		UV3	Ford	F650	2007
UV6 Ford Water Truck 1987 Ford Water Truck	7828	UV6	Ford	Water Truck	2007
UV13 2019 Polaris Ranger XP 900	4XARTE876K8873292	UV13	Polaris	SXS	1987

Nathan Ferraro

Professional

- ATSSA Advanced Work Zone Traffic Control Certified
- Qualified Stormwater Management Inspector

Experience

Gregori Construction Inc., Sarver PA

2025 – Present

Southern Regional Manager (Mims, FL Division)

Duties:

- Is an integral part in running all the projects in Florida as well as the office.
- Attend Bid Meetings, Site Visits and collaborate with PA Estimating department on Florida bidding and bid reviews
- Help foster fresh new Business Development processes and contacts in Florida outside of the public bid projects we typically pursue
- Manage all operations of our FL office (including personnel, equipment, materials, construction methods, etc.) in collaboration with our PA office
- Some project estimating, in collaboration with our PA office
- Improve our overall construction efficiency and productivity

Gregori Construction Inc., Sarver PA

July 2016 – 2025

General Superintendent (Mims, FL Division)

Duties:

- Oversight and training of asphalt paving operations (FDOT and non-FDOT)
- Complete field management of construction projects of varying size and scope
- Coordination and scheduling of field personnel, equipment, and materials for entire project
- Ensuring that Company safety and EEO programs are enforced on the project and that records are in order pertaining to OSHA and relevant EEO agencies.
- Plan project work in advance, regularly reviewing project requirements with the Project Manager and the Owner.
- Continually investigating and recommending changes in methods, materials and sequencing during construction.
- Construction of projects requiring deep excavation and excavation support.

Hubbard Construction Company, Winter Park FL

Superintendent

December 2015 – July 2016

Duties:

- Management of field crews of up to 25 workers on roadway and drainage construction projects
- Management of asphalt paving crews (FDOT and non-FDOT paving operations)
- Management of material and subcontractor procurement
- Oversight of all facets of project safety, including deep excavation support, fall protection, equipment safety, and safety training for construction personnel.
- Assurance that all construction activities were completed in accordance with owner's specifications.
- Supervision of setup, maintenance and removal of MOT signage and equipment

Foreman / Operator

April 2006 – December 2015

Duties:

- Operation of asphalt paving equipment (FDOT and non-FDOT paving operations)
- Evaluation and inspection of grading and excavation equipment to ensure that proper equipment is used.
- Operation of grading equipment for roadway base installation, rough grading, and fine grading
- Management of grading and excavation crews, including checking grades and overseeing compliance testing
- Inspection of work to ensure that workmanship conforms to specifications
- Using instruments such as lasers, grade rods, pipe lasers, etc. to set appropriate grades for pipe installation

Andrew M. Gregori

Education

University of Pittsburgh

- *B.S Physics & Applied Mathematics – 1994*
- *M.S. Studies, Civil Engineering -2000-2002*

Professional

- State of FL Contractor License CGC1512990 (Certified General Contractor)
- State of FL Contractor License CUC1224399 (Certified Underground / Utility Contractor)
- Competent Person Training, Excavation
- OSHA Confined Space Training

Experience

Gregori Consulting LLC, Mims FL

July 2023 – Present

Principal

Duties:

- Responsible for all activities for heavy/highway consulting and construction company including marketing, estimating, project management, design, permitting, etc.

Gregori Construction Inc., Sarver PA

May 2000 – Present

Vice President

Duties:

- Management and operations of corporate and branch office and office personnel
- Senior project management for all Gregori Construction work (\$1000 - \$9.4M / per project)
- Implementation and maintenance of cost accounting and job costing systems
- In-house design, including:
 - Excavation shoring systems (including sheet- and soldier-pile walls)
 - Scaffolding and work platforms
 - Personnel safety systems
 - Concrete formwork
 - Temporary bridge structures & bridge support structures
 - Foundations
- Senior project management for all Gregori Construction work
- Implementation and maintenance of corporate EEO / Affirmative Action policies
- Supervision of / consulting with project managers and superintendents / foremen in selecting construction equipment, materials, and methods for various heavy/highway construction projects
- Final review and approval for construction-site safety measures, including excavation support, above-ground accessways, vehicular safety, etc.
- Cost estimating / bidding
- Review of project plans and specifications with project managers and superintendents/foremen to assure compliance during construction

Gregori Construction & Engineering, Inc., Sarver PA

January 1998 – January 2008

Project Manager

Duties:

- Project management of Gregori Construction projects up to \$2.5M
- Consultation with superintendents/foremen in selecting construction equipment, materials, and methods for various heavy/highway construction projects
- Maintenance of project schedules in conjunction with superintendents/foremen
- In-house design, including:
 - Excavation shoring systems (including sheet- and soldier-pile walls)
 - Scaffolding and work platforms
 - Concrete formwork
 - Temporary bridge structures & bridge support structures
 - Foundations
- Implementation and maintenance of project EEO / Affirmative Action policies
- Review of construction-site safety measures, including excavation support, above-ground accessways, vehicular safety, etc.
- Cost estimating / bidding
- Review of project plans and specifications with inspectors and superintendents/foremen to assure compliance during construction

Seth Horwat, PE

Education

University of Detroit Mercy

- *Bachelor's Civil Engineering 2013-2017*
- *Master's Civil Engineering 2017-2018*

Professional

- State of Pennsylvania Professional Engineer License, License No. PE093051
- State of Florida Professional Engineer License, License No. 95450
- State of Michigan Professional Engineer License, License No. 6201309894
- State of Ohio Professional Engineer License, License No. E-88290
- State of West Virginia Professional Engineer License, License No. 25516
- Member of ASCE: American Society of Civil Engineers

Experience

Gregori Construction Inc., Sarver, PA

January 2024 – Present

Senior Project Manager

Duties:

- Manage all project management operations for the Pennsylvania office.
 - Oversee all project managers and assistant project managers for the PA office.
 - Responsible for developing the summer internship program and overseeing all interns.
- Project management of Gregori Construction projects up to \$40M.
- In-house design, including:
 - Excavation shoring systems (including sheet- and soldier-pile walls)
 - Scaffolding and work platforms
 - Personnel safety systems
 - Concrete formwork
 - Temporary bridge structures & bridge support structures
 - Foundations
- Implementation and maintenance of cost accounting and job costing systems.
- Maintain master project schedule.
- Review of project plans and specifications with project managers and superintendents/ foremen to assure compliance during construction.
- Cost Estimator on various heavy highway, railway, utility & municipality projects.
- Tasked with teaching newly hired estimators on proper bidding procedures.
- Maintenance of all project schedules for the Pennsylvania Office.

Gregori Construction Inc., Sarver, PA

May 2018 – December 2023

Project Manager, Superintendent, Estimator, QC Manager, Engineer

Duties:

- Project Manager on various USACE, NSRR, AMTRAK, DLC, City, County & State Projects up to \$35M.
- Superintendent on various USACE, DOE, & NSRR Projects.
- Quality Control Manager on various USACE Projects.
- Cost Estimator on Various Heavy Highway, Railway, Utility & Municipality Projects.
- In-house design, including:
 - Excavation shoring systems (including sheet- and soldier-pile walls)
 - Scaffolding and work platforms
 - Personnel safety systems
 - Concrete formwork
 - Temporary bridge structures & bridge support structures
 - Foundations

Seth Horwat
536 Sawmill Run Road Butler, PA 16001

horwatse@gmail.com

(724) 504 - 8868

Testing Engineers and Consultants Inc., Troy, MI
Soil Boring Driller/ Lab Technician

September 2017 – April 2018

Duties:

- Performed standard penetration tests and classification of test boring logs in the field.
- Performed a variety of tests on soil samples in the laboratory to determine their properties.

Gregori Construction Inc., Sarver, PA
Project Management Internship

May 2017 – August 2017

Duties:

- Review of project plans and specifications with inspectors and superintendents/foremen to assure compliance during construction.
- Worked with project managers to manage all phases of project documentation (permits, licenses, submittals, RFIs, work plans and change orders.)
- Worked with project managers on managing purchase of major materials, subcontractors, and equipment rentals.

Brayman Construction Corp., Saxonburg, PA
Heavy Civil Internship X2

May 2016 – August 2016

May 2015 – August 2015

Duties:

- Assisted with the Construction Surveying of the Hulton Bridge in Oakmont, PA.
- On site Project Engineer at the Culmerville Truss-Bridge Replacement Project performing cost justifications, force accounts, take-off for extra work items, kept track of quantities and submittals to PennDOT, worked with subcontractors, managed materials and assisted with surveying.

Pennsylvania Department of Transportation, Indiana, PA
Engineering Internship

May 2014 – August 2014

Duties:

- Inspected the construction of three new bridges, an emergency repair bridge and highway joint replacement.

University of Detroit Learning Center
Tutor

August 2015 – April 2018

Duties:

- Mathematics and Engineering Tutoring.

Formal Safety Training

- OSHA 10 Course
- Norfolk Southern FRA Roadway Worker Safety Training

Technical Skills

- Primavera P6
- Microsoft Project – Scheduling Software
- Bluebeam
- HCSS HeavyBid – Estimating Software
- HCSS HeavyJob – Project Management Software
- Foundation – Accounting Software
- AutoCAD
- Microsoft Office Suite (Excel, Word, PowerPoint, etc.)
- AGTEK – Earthwork Estimating Software
- SupportIT – Foundation Design Software

Seth Horwat
536 Sawmill Run Road Butler, PA 16001

horwatse@gmail.com

(724) 504 - 8868

Lance E. Shreffler, P.E.

Education

University of Pittsburgh

- *B.S Civil & Environmental Engineering, University of Pittsburgh – 1994*
- *M.S., Civil Engineering (PM & Geotechnical), University of Pittsburgh - 2001*

Experience

Gregori Construction Inc., Sarver PA

September 2020 – Present

President

Duties:

- Oversight of complete operations of Gregori Construction Inc. including:
 - Human resources
 - Administration
 - Financial performance of multiple offices
 - Estimating
 - Project management
 - Field management

Keller North America, Inc., Delmont PA

January 2020 – September 2020

Vice President

Duties:

- Continued to perform Vice President duties shown below.
- Managed office personnel and project estimating/operations for the transition from McKinney Drilling Co., LLC to Keller North America, Inc.
- Notable project involvement (1/2 half of 2020) include the Alcosan North End Expansion, WVDOH Corridor Hslip repair, Flats on Forward site development, Century Mining Longview Raw Plant facility, Cherry Valley
- Development project, CCAC Workforce Development & Training Center, The Buncher Company Bldg. #91, Duquesne Light Transmission Line Universal-Plum project.
- Continued to serve on the InSite development and implementation committee

McKinny Drilling Company LLC., Delmont PA

April 2016 – January 2020

Vice President

- Oversee the total management and operations of four (4) Northeast Region offices (Cleveland, Philadelphia, Pittsburgh and Charleston, WV) totaling \$24.4M in sales in 2017 and \$27.8M in 2016. Territory covers 17 states/commonwealths.
- Direct management of the Pittsburgh District area office.
- Managed 3 District (area) Managers, 10 Estimators/PM's, 7 Admins, 10 Superintendents and 100+ Field Personnel at the peak of operations.
- Chairman and Developer of the McKinney Risk Management (RM) Program. Included managing policy updates.
- Performed High Level Bid Reviews meeting minimum standard RM threshold values.
- Served as McKinney's representative on the Keller NA Engineering Summit team.
- Served as one of two North American representatives (Leaders) on the Keller Bored Pile Global Product Team
- (GPT), specializing in large diameter drilled shaft construction of all types.
- Served as McKinney's Business Development Representative. Has performed multiple 'Lunch and Learns' and company presentations from Operations, to Means & Methods and Estimating/Project Management.
- Responsible for all Northeast Regional personnel/salary reviews, financial reviews/reporting, hires, layoffs, capital expenditures, executive/operations meetings, and shop operations.
- Managed all of MDC's Equipment Watch (Bluebook) costing program.
- Served on the InSite Development and implementation committee

Jesse J. Salazar II, CCEA

Education

East Tennessee State University

- *B.S., Construction Management Technology - 1998*

Experience

Gregori Construction Inc.

August 2023 – Present

Project Manager

Duties:

- Project management of construction projects (roadway, excavation, bridge, structural steel) ranging in size up to \$4,000,000
- Coordination and scheduling of field personnel and equipment
- Ordering/scheduling materials and subcontractors
- Project safety
- Maintenance of all required field paperwork
- Quality control
- Interacting with project owners, Engineers, and Inspectors
- Ensuring construction teams' adherence to project plans and specifications

Jones Edmunds, Titusville FL

2018 - 2023

Sr. Construction Administrator

Duties:

- Management of contracts with NASA and surrounding municipal entities
- Ensuring project delivery in accordance with project design so that clients received highest quality projects
- Responsible for engineering services during construction
- Estimation of construction and proposed change order costs
- Resolution of construction issues
- Maintenance of client relationships and communication of project progress to clients

Hellas Construction Inc.

2017 - 2018

Regional Operations Manager

Duties:

- Responsible for management of concurrent contracts in Greater Houston area
- Management of all operations, estimating, cost control, scheduling, and procurement for multiple construction projects
- Coordination of work for multiple craft trades and subcontractors
- Maintenance of client relations

Rytec Construction Resources, Houston TX

2003 - 2016

Sr. Project Manager

Duties:

- Management of multiple construction projects in excess of \$20M each
- Procurement of subcontractors, materials, and consultants for concurrent construction projects
- Cost control, productivity, and profitability reporting
- Schedule, invoice, and change order management
- Communication with clients for concurrent construction projects.

Gregori Construction & Engineering, Inc.**Sarver, PA****Feb 2004****to****Present***General Superintendent / Superintendent (Mims,
FL Division)*

Responsibilities:

- Complete field management of construction projects of varying size and scope
- Overall field management of all Gregori Construction FL Region work
- Coordination and scheduling of field personnel, equipment, and materials for entire project
- Ensuring that Company safety and EEO programs are enforced on the project and that records are in order pertaining to OSHA and relevant EEO agencies.
- Thoroughly understanding project plans, specifications, contract requirements, and Owner's goals and constructing each project in accordance with these.
- Plan project work in advance, regularly reviewing project requirements with the Project Manager and the Owner.
- Continually investigate and recommend changes in methods, materials and sequencing during construction.

Key Projects:

Project:	E5R32 SR434 Outfall Improvement	Project Role:	Superintendent
Owner:	FL Department of Transportation, Dist. 5	Contract Amount:	\$ 970,000
Project Scope:	Installation of approx. 10,000 SF steel sheet pile and 550 SY articulating concrete block revetment. The work area for this project was in a residential area with very little access room.		

Project:	Sykes Creek Drainage Outfall Improvements	Project Role:	Superintendent
Owner:	Brevard County Natural Res. Mgmt. Office	Contract Amount:	\$ 470,000
Project Scope:	Installation of 10 EA vault-type precast concrete baffle box structures, ranging in size from 8'x10' to 10'x20' and in depth from 8' to 12'. All work was done within the County ROW, but on residents' properties. Dewatering was necessary due to water table elevations, and excavation support was required because of excavation depths.		

Project:	Kingsmill Subdivision Drainage Impr.	Project Role:	Superintendent
Owner:	Brevard County, FL	Contract Amount:	\$ 500,000
Project Scope:	Installation of 128 LF 60" RCP (max 8 FT depth), Installation of 470 LF 54" RCP (max 12 FT depth)		

Project:	North Ditch Drainage Improvements	Project Role:	Superintendent
Owner:	City of Cape Canaveral, FL	Contract Amount:	\$ 480,000
Project Scope:	Construction of 3 EA vault-type baffle box structures (10' x 16', 12' deep), including associated drainage pipe. This work required extensive dewatering and water quality controls, as well as excavation support along Central Blvd. immediately adjacent to the work area.		

Project:	CIP Dewatering Improvements	Project Role:	Superintendent
Owner:	Allegheny County Sanitary Authority	Contract Amount:	\$ 2,000,000
Project Scope:	Construction of 2 EA 250,000 wastewater containment vaults, construction of 6-story structural steel stair tower, misc. construction of 10,000 SF elevated structural steel / concrete deck platform.		



Florida Office:
3067 US Hwy 1, Mims, FL 32754 phone: 321-607-6160
Corporate Office:
P.O. Box 121, Sarver, PA 16055 phone: 724-353-1322

Application for Credit

Type of Business:	<u>Heavy Construction</u>	Company Started:	<u>1989</u>
President:	<u>Lance Shreffler</u>	Company Incorporated:	<u>State of PA, Jan. 1998</u>
V. P./Treasurer:	<u>Peter N. Gregori</u>	Federal ID:	<u>23-2938638</u>
Secretary:	<u>Anthony Lascola</u>	D-U-N-S Number:	<u>6085-10855</u>

Accounts Payable Contact:	<u>Ryan Morrison, Controller</u>	Purchase Order No. Required - <u>YES</u>
Email for invoices/statements:	<u>invoicesfl@gregori-inc.com</u>	Job Number / Name Required - <u>YES</u>

References:

Company:	Anderson Rentals, Inc	Company:	HDS White Cap Construction Supply
Address:	3660 US Highway 1m PO Box 765	Address:	501 W. Church Street
	Mims, FL 32754		Orlando, FL 32805
Phone:	321-269-9957	Phone:	407-841-4755
Fax:	321-383-3408	Fax:	407-297-5892
Email:		Email:	
Company:	NAPA Auto Parts	Company:	John Thrower Inc.
Address:	714 Ekastown Road	Address:	409 Saxonburg Blvd.
	Sarver, PA 16055		Saxonburg, PA 16056
Phone:	724-353-1518	Phone:	724-352-9421
Fax:		Fax:	724-352-9512
Email:	Jacksparts@hotmail.com	Email:	
Company:	George L. Wilson Company	Company:	Frank Bryan Inc.
Address:	220 E. General Robinson Street	Address:	1263 Chartiers Avenue
	Pittsburgh, PA 15212		McKees Rocks, PA 15136
Phone:	412-321-3218	Phone:	412-331-1630
Fax:	412-321-6177	Fax:	412-331-1374
Email:	l.lawless@GeorgeLWilson.com	Email:	vernadeangelis@bryanmaterialsgroup.com
Name of Bank:	Key Bank	Insurance Agent:	Seubert & Associates
Contact:	Christey Browne	Contact:	Brian Hartman
Address:	11 Stanwix Street	Address:	225 North Shore Drive, Suite 300
	Pittsburgh, PA 15222		Pittsburgh, PA 15212
Phone:	412-807-2915	Phone:	412-223-1423
Fax:	412-471-2109	Fax:	412-734-5725
Email:	Christey_Browne@keybank.com	Email:	bhartman@seubert.com

By signing below I ask that an account be opened as requested above. Also renew the account annually until the account is canceled. I understand and agree that you may verify and exchange information on me to determine credit responsibility. Full payment of the account is due and payable as stipulated in the terms of transacted invoices. A monthly statement will be sent to recap purchases for the month. Any past due balances will be subject to a finance charge. I agree to the terms and conditions set forth to open this account. It is understood that I am financially liable for authorized charges to this account.

Signature: 
Lance Shreffler, President

Valid for 2026

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: City of Melbourne
Contact Person: Tom Baker, PE
City, State: Melbourne, Florida
Telephone Number: 321 - 288 - 0944
Email Address: Thomas.Baker@mlbfl.org
Description of goods/services provided: Complete SS Lift Station Replacement
Contract Amount: \$2,795,000.00
Start/End Date of Contract: 8/24 to 9/25
2. Company Name: DRMP, Inc.
Contact Person: Scott, DRMP
City, State: Merritt Island, Florida
Telephone Number: 321 - 453 - 0010
Email Address: snickle@drmp.com
Description of goods/services provided: Brevard County - S19 - Complete Lift Station Replacement
Contract Amount: \$1,285,000.00
Start/End Date of Contract: 7/22 to 8/23
3. Company Name: Seminole County
Contact Person: John Miller, Project Coordinator II - Public Works/ Engineering
City, State: Sanford, Florida
Telephone Number: 407 - 665 - 5611
Email Address: jmillier04@seminolecountyfl.gov
Description of goods/services provided: 2848 LF of 48" RCP & Junction Boxes
Contract Amount: \$2,061,225.00
Start/End Date of Contract: 6/23 to 4/24

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1Name: Mersino/ IroncladDescription of Work: Dewatering/ Bypass PumpingPercent of Contract Price: 5.6Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 2Name: Huxted TrenchlessDescription of Work: 72" Casing Installation (J&B/ Microtunneling)Percent of Contract Price: 13.2Previous Experience Together: ☐ Yes ☒ NoSubcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ NoSubcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ NoSubcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Nathan Ferraro, Southern Regional Manager, on behalf
(Print Name and Title)
of Gregori Construction Inc. ("Company"), certify that Gregori Construction Inc.
(Company Name) (Company Name)

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

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

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

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

Gregori Construction Inc.
COMPANY NAME


SIGNATURE

Nathan Ferraro
PRINT NAME

Southern Regional Manager
TITLE

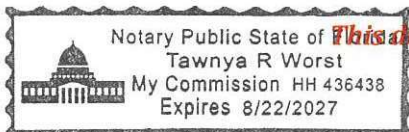
STATE OF FLORIDA

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.


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



This document must be completed and returned with your submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

*This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida***THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:**Project# (as applicable): ITB-26-06Business Name: Gregori Construction Inc. Contact Person/Title: Nathan Ferraro, Southern Regional ManagerMailing Address: 3067 US Highway 1 City, State, Zip: Mims, FL 32754Phone Number: 321-607-6160 Email address: nferraro@gregori-inc.comPhysical Presence of Business: ☐ Headquarters ☒ Principal Place of BusinessWithin Legal Boundaries: ☐ City of Port Orange ☐ Volusia County ☒ State of FloridaFEIN (Federal Employer Identification Number): 23-2938638Business Structure: ☒ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

Gregori Construction Inc. is not considered to be a local business as herein defined

Signature

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Cambridge Station Pump Upgrade

Solicitation Number: ITB#26-06

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

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

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

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

Nathan Ferraro, Southern Regional Manager
Print or Type Name, Title


Signature of Affiant

23-2938638
Federal Employer ID Number (FEIN)

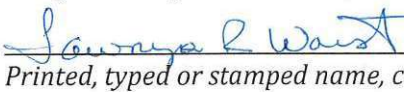
470058
E-Verify Number

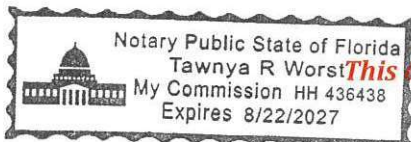
STATE OF FLORIDA

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of June, 2026, by Nathan Ferraro and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

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



This document to be completed and returned with your Submittal



My Company Account

My Company Profile

Company Information

Company Name

Gregori Construction Inc.

Doing Business As (DBA) Name

Company ID

470058

Enrollment Date

Dec 01, 2011

Employer Identification Number (EIN)

232938638

Unique Entity Identifier (UEI)

DUNS Number

Total Number of Employees

20 to 99

NAICS Code

237

Sector

Construction

Subsector

Heavy and Civil Engineering Construction

Edit Company Information

Employer Category

Employer Category

Federal Contractor without FAR E-Verify Clause

[Edit Employer Category](#)

Points of Contact

Name ↑	Number ↑	Ext ↑	Email ↑	Signature ↑	Last Updated ↑
Anthony Lascola	(724) 353-1322	17	alascola@gregori-inc.com	No	04/29/19
Brian Curry	(724) 353-1322	17	bcurry@gregori-inc.com	No	02/26/13
Andrew Gregori	(724) 353-1322	16	agregori@gregori-inc.com	No	12/02/11

Rows Per Page

1

[Edit Points of Contact](#)

Company Addresses Hiring Sites

Physical Address

736 Ekastown Rd
Sarver, PA 16055

Number of Sites

2

Mailing Address

PO Box 121
Sarver, PA 16055

[Edit Hiring Sites](#)

[Edit Company Addresses](#)

Company Access

My Company is configured to:

Verify Its Own Employees

Memorandum of Understanding

[View Current MOU](#)

My Company has enabled:

E-Verify+

Terms of Service

[View E-Verify+ Terms of Service](#)

E-Verify+ enabled by:

Pamela Setzenfand (Apr 06, 2026)

[U.S. Department of Homeland Security](#) [U.S. Citizenship and Immigration Services](#)

[Accessibility](#) [Plug-ins](#) [Site Map](#)



**FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Gregori Construction Inc.
Organization Name

Nathan Ferraro, Southern Regional Manager
Name and Title of Authorized Representative

Cambridge Station Pump Upgrade
Bid Number or Project Name

 6/4/26
Signature Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

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

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

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

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

Date: 06/04, 2026

Signed: [Signature]

Entity: Gregori Construction Inc.

Name: Nathan Ferraro

Title: Southern Regional Manager

STATE OF: Florida

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of June, 2026, by Nathan Ferraro and who:

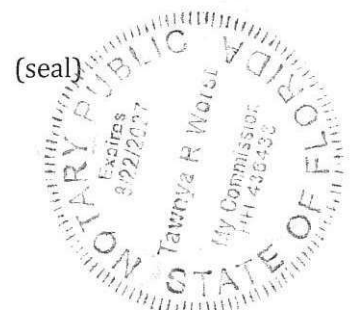
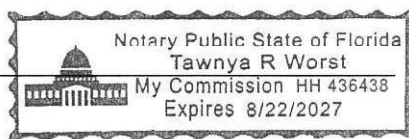
☒ Is personally known to me; or ☐ has produced N/A as identification.

[Signature]

Notary Public, State of Florida at Large:

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

My commission expires: _____



This document must be completed and returned with your Submittal

FORM 7.15 – NO BID RESPONSE

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

N/A

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

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

Solicitation: ITB #26-06 CAMBRIDGE PUMP STATION UPGRADES

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

- ☐ Specifications "too tight" or geared toward on brand or manufacturer (please explain below)
- ☐ Insufficient time to respond
- ☐ Specifications unclear (please explain below)
- ☐ We do not offer this product/service or an equivalent
- ☐ Our product schedule does not permit us to perform within stated timeline for the project
- ☐ Unable to meet specifications
- ☐ Unable to meet bond requirements
- ☐ Unable to hold prices firm throughout the term of the contract period
- ☐ Unable to meet insurance requirements
- ☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

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

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

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

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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



Signature of Contractor's Authorized Official

Nathan Ferraro, Southern Regional Manager

Name & Title of Contractor's Authorized Official

Date: 6/4/26

This document must be completed and returned with your Submittal



ATTACHMENT 1 SCHEDULE OF UNIT PRICING

ITB #26-06

CAMBRIDGE PUMP STATION UPGRADES

Name of Business: Gregori Construction Inc.

Contact Person: Seth Horwat

Email Address: shorwat@gregori-inc.com

Authorized Signature: *Seth Horwat*

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM #	DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	EXTENDED PRICE
GENERAL					
1	Mobilization/General Conditions	LS	1		\$ 700,000.00
2	Insurance, Performance and Payment Bond	LS	1		\$ 125,000.00
3	Project Closeout/As-Built Drawings	LS	1		\$ 5,000.00
4	Preconstruction Video	LS	1		\$ 2,500.00
5	Construction Testing (Pressure, Density)	LS	1		\$ 40,000.00
6	General Site Restoration	LS	1		\$ 25,000.00
7	Clear & Grubbing	AC	0.6	\$ 120,000.00	\$ 72,000.00
8	Excavation	CY	2,470	\$ 20.00	\$ 49,400.00
9	Embankment	CY	6,497	\$ 25.00	\$ 162,425.00
10	Performance Turf, Sod	SY	1,600	\$ 5.00	\$ 8,000.00
11	Dewatering	LS	1		\$ 400,000.00
12	Pump Station Demolition, including but not limited to: - Sandbags - Pile Wall with Concrete Cap - Drainage Structure - Existing Piping - Pipe Supports - Outfall Structure - Screens	LS	1		\$ 200,000.00
13	Bypass Pumping	LS	1		\$ 400,000.00
PROPOSED IMPROVEMENTS					
14	54" DIP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	150	\$ 6,500.00	\$ 975,000.00
15	72" PCCP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	475	\$ 6,200.00	\$ 2,945,000.00
16	Pipe Supports	EA	6	\$ 8,000.00	\$ 48,000.00
17	54" DI Check Valve	EA	3	\$ 380,000.00	\$ 1,140,000.00
18	54" DI Gate Valve	EA	3	\$ 280,000.00	\$ 840,000.00
19	72" Pipe Header	LS	1		\$ 682,000.00
20	Jack & Bore Installation (54-in DIP with 72" STL casing)	LF	250	\$ 16,400.00	\$ 4,100,000.00
21	Floating Turbidity Barrier	LF	700	\$ 20.00	\$ 14,000.00
22	Pipe Culvert, Optional Material, Round, 10"	LF	40	\$ 30.00	\$ 1,200.00
23	Pipe Culvert, Optional Material, Round, 36"	LF	200	\$ 150.00	\$ 30,000.00
24	Articulating Concrete Block Revetment System, 6" Thickness	SY	1,800	\$ 115.00	\$ 207,000.00
25	Inlet, Dt Bot, Type D, <10'	EA	1	\$ 26,000.00	\$ 26,000.00
26	Inlet, Dt Bot, Type E, <10'	EA	1	\$ 6,000.00	\$ 6,000.00
27	Manhole Type J-7, <10'	EA	2	\$ 8,500.00	\$ 17,000.00
28	Mitered End Section, Optional Round, 36"	EA	1	\$ 4,400.00	\$ 4,400.00
29	Wapro WaStop NES 48" Flange Outlet Backflow Preventer	EA	2	\$ 67,500.00	\$ 135,000.00
30	Sediment Barrier	LF	450	\$ 20.00	\$ 9,000.00
31	Floating Sediment Barrier	LF	600	\$ 18.00	\$ 10,800.00
32	Staked Turbidity Barrier	LF	575	\$ 25.00	\$ 14,375.00
33	Structural Platform	LS	1	\$ 205,000.00	\$ 205,000.00
34	Outfall Structure	LS	1	\$ 190,000.00	\$ 190,000.00
35	Pump Station Concrete	CY	100	\$ 475.00	\$ 47,500.00
36	Electrical	LS	1		\$ 560,000.00
37	Allowance for Unforeseen Construction Conflicts	LS	1		Too be Determined by Owner
LEGEND:				TOTAL PRICE	\$ 14,396,600.00
LS - LUMP SUM					
CY - CUBIC YARD					
SY- SQUARE YARD					
EA-EACH					
AC- ACRE					
LF - LINEAR FEET					

Bond Division
103 Gamma Drive
Suite 150
Pittsburgh, PA 15238-2983
412.963.0609 ph
412.963.7012 fax



City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

May 27, 2026

RE: Gregori Construction, Inc.

To Whom It May Concern,

Great American Insurance Company currently has the pleasure of providing bonds for Gregori Construction, Inc. We find their financial strength, technical expertise and proven ability to perform quality work very deserving of our surety support. We feel that Gregori is deserving of your full confidence, and it is without hesitation that we recommend this fine contractor. Great American Insurance Company's program contemplates single projects in excess of \$40,000,000 and aggregate programs in excess of \$60,000,000.

Great American is rated A+ (Superior) by A. M. Best Company.

This letter is not an assumption of liability, nor is it a bid bond or a performance bond. It is issued only as a bonding reference, requested from us by our client.

If further documentation is required or if I can be of any other assistance, please do not hesitate to contact me directly.

Sincerely,
Great American Insurance Company

A handwritten signature in blue ink that reads "Pamela M. Anderson".

Pamela M. Anderson
Attorney-in-Fact



for all the *great* you do®

GREAT AMERICAN INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND CAPITAL & SURPLUS AS OF DECEMBER 31, 2025

ADMITTED ASSETS		LIABILITIES, CAPITAL AND SURPLUS	
Bonds.....	\$ 6,081,413,282	Unpaid losses and loss expenses.....	\$ 6,661,038,738
Stocks.....	1,299,843,902	Reserve for underwriting expenses.....	459,610,865
Mortgage loans on real estate.....	956,835,950	Reserve for unearned premiums.....	2,155,649,949
Real estate (net of encumbrances).....	1,622,624	Federal income taxes	33,479,485
Cash and short-term investments.....	731,529,563	Ceded reinsurance premiums payable.....	270,415,966
Other invested assets.....	2,674,856,354	Funds held under reinsurance treaties.....	812,417,103
Receivable for securities.....	193,005	Provision for reinsurance.....	56,389,384
Investment income due and accrued.....	64,949,129	Retroactive reinsurance.....	(50,683,740)
Agents' and premium balances.....	1,031,058,445	Other liabilities.....	283,066,126
Reinsurance recoverable on loss payments.....	170,723,106	Total liabilities.....	10,681,383,876
Federal income taxes	-		
Net deferred tax asset.....	10,272,857	Capital stock.....	\$ 15,440,600
Receivable from affiliates.....	32,560,394	Paid in surplus.....	919,318,972
Receivable from Federal Crop Insurance Corporation.....	915,548,981	Special surplus funds.....	50,109,873
Company owned life insurance.....	205,345,627	Unassigned funds.....	2,615,480,283
Funds held as collateral.....	28,944,633	Policyholders' surplus.....	3,600,349,728
Funded deductibles.....	40,622,954		
Other admitted assets.....	35,412,798		
Total.....	\$ 14,281,733,604	Total.....	\$ 14,281,733,604

Securities have been valued on the basis prescribed by the National Association of Insurance Commissioners.

STATE OF OHIO

COUNTY OF HAMILTON

Judith E. Gill, Vice President and Controller, and Stephen Beraha, Assistant Vice President and Assistant Secretary, being duly sworn, each for himself deposes and says that they are the above described officers of the Great American Insurance Company of Cincinnati, Ohio; that said Company is a corporation duly organized, existing and engaged in business as a Surety by virtue of the laws of the State of Ohio and has duly complied with all the requirements of the laws of said state applicable to said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under Public Law 97-258 enacted September 13, 1982 (96 Stat. 1047 as amended; 31 U.S.C. 9304-9308); that to the best of their knowledge and belief the above statement is a full, true and correct Statement of the Assets, Liabilities and Capital & Surplus of the said Company as of December 31, 2025.

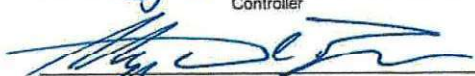
Subscribed and sworn to before me

this 3rd day of March, 2026.


Public Notary



VALERIE SMITH
Notary Public
State of Ohio
My Comm. Expires
October 17, 2026


Controller

Assistant Secretary



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

GREGORI, ANDREW M

GREGORI CONSTRUCTION INC
3067 US HIGHWAY 1
MIMS FL 32754

LICENSE NUMBER: CGC1512990

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com

ISSUED: 06/26/2024

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Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

GREGORI, ANDREW M

GREGORI CONSTRUCTION INC
3067 US HIGHWAY 1
MIMS FL 32754

LICENSE NUMBER: CUC1224399

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com



ISSUED: 06/26/2024

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

Detail by Entity Name

Foreign Profit Corporation

GREGORI CONSTRUCTION INC.

Filing Information

Document Number	F04000001502
FEI/EIN Number	23-2938638
Date Filed	03/09/2004
State	PA
Status	ACTIVE
Last Event	NAME CHANGE AMENDMENT
Event Date Filed	07/08/2013
Event Effective Date	NONE

Principal Address

736 EKASTOWN ROAD
SARVER, PA 16055

Mailing Address

3067 US HWY 1
Mims, FL 32754

Changed: 01/19/2023

Registered Agent Name & Address

Gregori, Andrew M
5279 Wexford Drive
Rockledge, FL 32955

Name Changed: 02/15/2018

Address Changed: 02/15/2018

Officer/Director Detail

Name & Address

Title President

Shreffler, Lance
736 EKASTOWN ROAD
SARVER, PA 16055

Title SEC

LASCOLA, ANTHONY J
828 Pennsylvania Ave
OAKMONT, PA 15139

Title VP

GREGORI, ANDREW M
5279 Wexford Drive
Rockledge, FL 32955

Title TR

GREGORI, Peter
736 EKASTOWN ROAD
SARVER, PA 16055

Title Administrative Assistant, Asst. Secretary

Worst, Tawnya
3067 US HWY 1
Mims, FL 32754

Title Project Manager, Asst. Secretary

Salazar, Jesse
3067 US HWY 1
Mims, FL 32754

Title Southern Regional Manager, Asst. Secretary

Ferraro, Nathan
3067 US HWY 1
Mims, FL 32754

Title VP of Operations

Brian, Curry, Mr.
736 Ekastown Road
Sarver, PA 16055

Annual Reports

Report Year	Filed Date
2026	01/13/2026
2026	04/16/2026
2026	05/26/2026

Document Images

[05/26/2026 -- AMENDED ANNUAL REPORT](#)

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01/16/2025 -- ANNUAL REPORT	View image in PDF format
04/15/2024 -- AMENDED ANNUAL REPORT	View image in PDF format
01/24/2024 -- ANNUAL REPORT	View image in PDF format
01/19/2023 -- ANNUAL REPORT	View image in PDF format
02/09/2022 -- AMENDED ANNUAL REPORT	View image in PDF format
01/19/2022 -- ANNUAL REPORT	View image in PDF format
01/19/2021 -- ANNUAL REPORT	View image in PDF format
09/11/2020 -- AMENDED ANNUAL REPORT	View image in PDF format
01/15/2020 -- ANNUAL REPORT	View image in PDF format
01/15/2019 -- ANNUAL REPORT	View image in PDF format
12/04/2018 -- AMENDED ANNUAL REPORT	View image in PDF format
02/15/2018 -- AMENDED ANNUAL REPORT	View image in PDF format
01/17/2018 -- ANNUAL REPORT	View image in PDF format
01/11/2017 -- ANNUAL REPORT	View image in PDF format
03/01/2016 -- ANNUAL REPORT	View image in PDF format
01/12/2015 -- ANNUAL REPORT	View image in PDF format
01/07/2014 -- ANNUAL REPORT	View image in PDF format
07/08/2013 -- Name Change	View image in PDF format
01/28/2013 -- ANNUAL REPORT	View image in PDF format
01/06/2012 -- ANNUAL REPORT	View image in PDF format
02/09/2011 -- ANNUAL REPORT	View image in PDF format
01/12/2010 -- ANNUAL REPORT	View image in PDF format
03/23/2009 -- ANNUAL REPORT	View image in PDF format
01/14/2008 -- ANNUAL REPORT	View image in PDF format
04/13/2007 -- ANNUAL REPORT	View image in PDF format
01/27/2006 -- ANNUAL REPORT	View image in PDF format
07/10/2005 -- ANNUAL REPORT	View image in PDF format
03/09/2004 -- Foreign Profit	View image in PDF format

2025 - 2026

BREVARD COUNTY BUSINESS TAX RECEIPT
SUBJECT TO COUNTY ZONING RESTRICTIONS
TAX RECEIPT SHOULD BE DISPLAYED ON PREMISES

ACCOUNT NO.
178977

THE PERSON(S), OR ENTITY BELOW:
GREGORI CONSTRUCTION INC

3067 US HIGHWAY 1
MIMS, FL 32754

DBA

LOCATION:
3067 US HIGHWAY 1
MIMS, FL 32754

OWNED BY:
GREGORI CONSTRUCTION INC

BUSINESS PERIOD: October 01, 2025 - September 30, 2026

EXPIRES: SEPTEMBER 30, 2026

ISSUED PURSUANT AND SUBJECT TO FLORIDA STATUTES AND BREVARD COUNTY CODE ISSUANCE
DOES NOT CERTIFY COMPLIANCE WITH ZONING OR OTHER LAWS.
BUSINESS TAX RECEIPT IS SUBJECT TO REVOCATION FOR ZONING VIOLATIONS, AND / OR FAILURE
TO MAINTAIN REGULATORY PRE-REQUISITES AS REQUIRED FOR BUSINESS CLASSIFICATION(S), OR
SUBSEQUENT ACTIVITIES. NOTIFY TAX COLLECTOR UPON CLOSING OF BUSINESS.
A PERMIT IS REQUIRED TO ADVERTISE (including with signage) "GOING OUT OF BUSINESS".

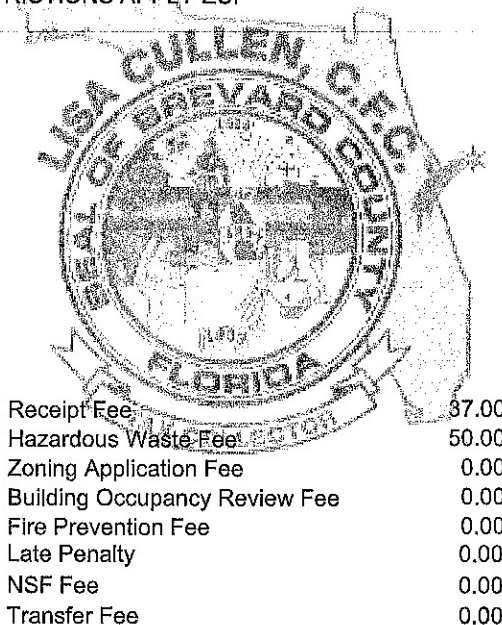
LISA CULLEN, CFC, Brevard County Tax Collector
P O Box 2500, Titusville, Florida 32781-2500
(321)264-6969 or (321)633-2199

UPON A CHANGE OF OWNERSHIP OR LOCATION,
BUSINESS TAX RECEIPT SHOULD BE TRANSFERRED WITHIN 30 DAYS.

BUSINESS CLASSIFICATIONS, DISCLAIMERS, AND RELATED FEES:

EXEMPTIONS: 0.00

820005	RECEIPT AMT
590501	HAZ WASTE GEN. SURCHARGE
300305	GENERAL CONTR.[CERTIFIED]
300750	UNDERGROUND UTILITY CONTR.
255	ZONING RESTRICTIONS APPLY-ZUP



Receipt Fee	37.00
Hazardous Waste Fee	50.00
Zoning Application Fee	0.00
Building Occupancy Review Fee	0.00
Fire Prevention Fee	0.00
Late Penalty	0.00
NSF Fee	0.00
Transfer Fee	0.00

Paid 000-25-00326352 07/02/2025 87.00

MAIN OFFICE: 400 South St., 6th Floor, Titusville, FL 32780

BRANCH OFFICES: Merritt Island Office, 1605 N. Courtenay Pkwy
Melbourne Office, 1515 Sarno Road
Palm Bay Office, 450 Cogan Dr. SE
Titusville Office, 800 Park Ave.
Indian Harbour Beach Office, 240 E. Eau Gallie Blvd.
Viera Office, 2725 Judge Fran Jamieson Way, #A108, Viera, FL 32940

BID BOND**BID BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that Gregori Construction Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 3067 U.S. Highway 1, Mims FL 32754, Tel.: 724-272-6240, (hereinafter called "PRINCIPAL"), and Great American Insurance Company, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 301 East Fourth Street, Cincinnati OH 45202, Tel: 513-369-5000 (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of Five Percent of Amount Bid dollars and (XX)/100 (\$5%), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated June 5, 2026, for:

Project Name/Bid No.: Cambridge Station Pump Upgrades. ITB#26-06

Project Address: Wiltshire Boulevard, Port Orange, FL 32127

Legal Description: See Attached

Description of Work: Construction of a New Discharge Structure, Piping and Berm

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this 5th day of June, 2026, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: Gregori Construction Inc.

Nathan Ferraro
Signature
Nathan Ferraro Southern Regional
Corporate Officer & Title Manager

ATTEST:

Jesse T. Salazar
Signature
Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY: Great American Insurance Company

Patti K. Lindsey
Attorney-in-Fact (signature)
Patti K. Lindsey, Attorney-In-Fact
Name & Title
Matthew M. Eperesi
Name of Local Resident Agent
1401 Forum Way, Suite 740
City, State, Zip
West Palm Beach, FL 33401
Telephone: 1-800-242-1546
A.M. Best No.: 005990 NAIC No.: 16691

ATTEST:

Lauren Hoff
Signature
Lauren Hoff, Witness
~~Corporate Secretary~~ (Affix Corporate Seal)

STATE OF PA

COUNTY OF Allegheny

Before me this day personally appeared Patti K. Lindsey (affiant), who, being duly sworn, deposes and says that Xshe is the Attorney-in-Fact for the Great American Insurance Company (corporate surety) and that this person has been authorized by Great American Insurance Company (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Patti K. Lindsey
Signature of Affiant Patti K. Lindsey

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Pamela M. Anderson and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Pamela M. Anderson Notary Public, State of PA
Printed, typed or stamped name, commission and expiration:

END OF BID BOND

This document must be completed and returned with your Submittal

Commonwealth of Pennsylvania - Notary Seal
Pamela M. Anderson, Notary Public
Allegheny County
My commission expires August 14, 2028
Commission number 1444040
Member, Pennsylvania Association of Notaries

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by
this power of attorney is not more than FIFTEEN

No. 0 22871

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
PAMELA M. ANDERSON NATALIE MEYER	ALL OF PITTSBURGH, PA	ALL UNLIMITED
MADLINE P. RECKTENWALD BARBARA A. LEEPER GRACIE O. LOWDEN		
WENDY A. BRIGHT JOSHUA RESTAURI LINDSAY MEYER		
PATTI K. LINDSEY MATTHEW M. EPERESI		
WILLIAM M. CHAPMAN GIAVONNA D. TAVELLA		
CHERI L. RITZ KAILEE M. TOPKA		

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 27TH day of APRIL, 2026

Attest

GREAT AMERICAN INSURANCE COMPANY



Steph C. B.

Assistant Secretary

John K. Webster

Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

JOHN K. WEBSTER (877-377-2405)

On this 27TH day of APRIL, 2026, before me personally appeared JOHN K. WEBSTER, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



SUSAN A KOHORST
Notary Public
State of Ohio
My Comm. Expires
May 18, 2030

Susan A Kohorst

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 5th day of June, 2026



Steph C. B.

Assistant Secretary



PO Box 121, 736 Ekastown Rd, Sarver, PA 16055
Ph: (724) 353-1322 / Fx: (724) 353-2486
www.gregori-inc.com

Corporate Resolution

December 23, 2025

I, the undersigned President of Gregori Construction Inc. (the corporation), HEREBY CERTIFY that the Corporation is organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania as a corporation for profit with its principal office at 736 Ekastown Road, Sarver, PA 16055, and is duly authorized to transact business in the Commonwealth of Pennsylvania and the State of Florida.

I FURTHER CERTIFY that at a meeting of the Directors of the Corporation, duly called and held on December 23, 2025, at which a quorum was present and voting, or by other duly authorized corporate action in lieu of a meeting, the following resolution was adopted:

BE IT RESOLVED, this corporation authorizes Nathan Ferraro to execute any and all bid documents and contract documents and conduct any other corporate business as required in any of the states in which Gregori Construction Inc. conducts business.



Corporate Secretary

Anthony Lascola



PO Box 121, 736 Ekastown Rd, Sarver, PA 16055
Ph: (724) 353-1322 / Fx: (724) 353-2486
www.gregori-inc.com

January 28, 2025

I, the undersigned Vice President of Gregori Construction Inc. (the CORPORATION), HEREBY CERTIFY that the CORPORATION is organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania as a Corporation for Profit with its principal office at 736 Ekastown Road, Sarver PA 16055. The CORPORATION is duly authorized to transact business in the Commonwealth of Pennsylvania and Florida.

I FURTHER CERTIFY that at a meeting of the Directors of the Corporation, duly called and held on January 28, 2025, at which a quorum was present and voting, or by other duly authorized corporate action in lieu of a meeting, the following resolution was adopted:

BE IT RESOLVED, this CORPORATION authorizes Jesse Salazar (Project Manager, FL Division) to execute any and all bid documents and contract documents as required for the CORPORATION's FL Division.



Andrew M. Gregori, Vice President



To Whom It May Concern

From: Michael Tempest, KeyBank

Date: May 28th 2026

Re: Gregori Construction, Inc

Please be advised that KeyBank, N.A., confirms that Gregori Construction, Inc has a Demand Line of Credit in place with KeyBank.

- Title on Account: Gregori Construction, Inc
- Amount: \$5,000,000
- Purpose: Working Capital Needs
- Expiration: Available on Demand

Should you have any questions, please do not hesitate to reach out to me at the number listed below.

Thank you,

Michael Tempest

Michael Tempest

Senior Business Banker

KeyBank Business Banking

11 Stanwix Street. Pittsburgh, PA 15222

cell (704) 942-8710 / office (412)807-2869

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement
- ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ☒ Form 7.4 – Drug Free Preference Statement
- ☒ Form 7.5 – Public Entity Crimes Statement
- ☒ Form 7.6 – Anti-Collusion
- ☒ Form 7.7 – Statement of Bidder's Qualifications
- ☒ Form 7.8 – Professional References for Previous Experience
- ☒ Form 7.9 – List of Subcontractors
- ☒ Form 7.10 – Scrutinized Companies Certification
- ☒ Form 7.11 – Local Business Affidavit of Eligibility
- ☒ Form 7.12 – E-Verify Affidavit & Proof of Registration
- ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ☒ Form 7.14 – Affidavit of Compliance With F.S. 287.138
- ☒ Form 7.15 – No Submittal Response **NIA**
- ☒ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
- ☒ (Attachment 1) – Schedule of Unit Pricing
- ☒ Current Bonding Capacity Letter (as outlined in Section 6)
- ☒ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ☒ Current Tax Receipt of Bidder's municipality
- ☒ Original Bid Bond or certified check or bank draft (as outlined in Section 6)
- ☒ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: Masci General Contractor, Inc.

Name of Business



Authorized Signature

June 5, 2026

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

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

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

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

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

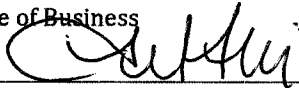
I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements and understands that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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

Masci General Contractor, Inc.

Name of Business



Authorized Signature

Leticia Masci Ferreira

Printed Name and Title

20-2045800

Federal Identification No.

5752 S. Ridgewood Avenue

Mailing Address

Port Orange, FL 32127

City, State & Zip Code

(386) 322-4500

Telephone Number

leticiamasci@mascigc.com

E-mail Address

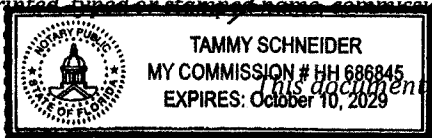
STATE OF: FLORIDA COUNTY OF: VOLUSIA

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

5th day of June, 2026, by Leticia Masci Ferreira and who:

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

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



This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 1 Date: 04/14/26

Addendum# 3 Date: 05/22/26

Addendum# 2 Date: 05/08/26

Addendum# 4 Date: 05/27/26

Addendum #5 Date: 05/29/26

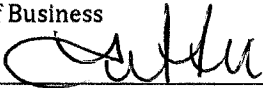
CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Masci General Contractor, Inc.

Name of Business



Authorized Signature

Leticia Masci Ferreira, Vice President

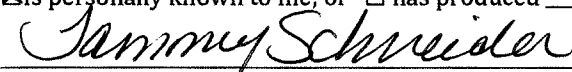
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: VOLUSIA

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

5th day of June, 2026, by Leticia Masci Ferreira and who:

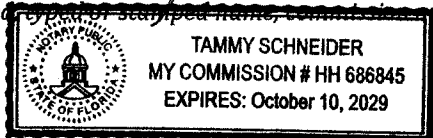
☒ Is personally known to me; or ☐ has produced _____ as identification.



Notary Public, State of

Florida

Printed name of notary, commission number and expiration:



This document must be completed and returned with your Submittal

FORM 7.4 - DRUG-FREE PREFERENCE STATEMENT

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

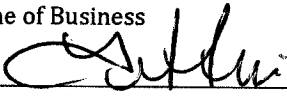
In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

Masci General Contractor, Inc.

Name of Business



Authorized Signature

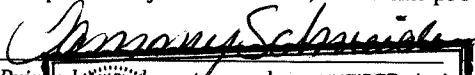
Leticia Masci Ferreira, Vice President

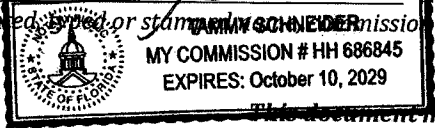
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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

 Notary Public, State of Florida
Printed name or stamp of notary and expiration:



This document must be completed and returned with your Submittal

FORM 7.5 - SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

Before me, the undersigned Authority, personally appeared affiant Leticia Masci Ferreira, who, being by me first duly sworn, made the following statement:

1. The business address of Masci General Contractor, Inc. (name of Offeror or business) is 5752 S. Ridgewood Avenue, Port Orange, FL 32127
2. My relationship to Masci General Contractor, Inc. (name of Offeror or business) is Vice President (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. (Draw a line through paragraph 6 if paragraph 7 below applies.)
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____ A copy of the order of the Division Administrative Hearing is attached.~~
(Draw a line through paragraph 7 if paragraph 6 above applies)

STATE OF: FLORIDA

COUNTY OF: VOLUSIA

Masci General Contractor, Inc.

Name of Business

Leticia Masci Ferreira

Authorized Signature
Leticia Masci Ferreira, Vice President

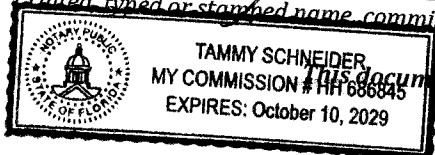
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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

Tammy Schneider
Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida



This document must be completed and returned with your Submittal

FORM 7.6 - ANTI-COLLUSION

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

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

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

NAME OF FIRM: Masci General Contractor, Inc.

SIGNED BY: _____

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

PRINTED SIGNATURE: Leticia Masci Ferreira

TITLE: Vice President

ADDRESS: 5752 S. Ridgewood Avenue

CITY, STATE AND ZIP CODE: Port Orange, FL 32127

TELEPHONE: (386) 322-4500

F.E.I.N.: 20-2045800

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 - STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: Masci General Contractor, Inc.
- B. Permanent main office address: 5752 S. Ridgewood Avenue, Port Orange, FL 32127
- C. Date organized: 2004
- D. If a corporation, where incorporated: Florida
- E. How many years have you been engaged in the business under your present firm or trade name? 22 years
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: drainage, underground utilities, grading, asphalt production, paving, excavation, concrete work, etc.
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No
- I. Have you ever defaulted on a contract? If so, where and why? No
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ 7,000,000.00
- M. Give bank name, contact name and phone number: 1st Source Bank, Renee Lincoln, (904) 481-6524
Intracostal Bank, Doug Reece, (386) 236-7443
- Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒ Yes ☐ No

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

Masci General Contractor, Inc.

Name of Business

[Signature]

Authorized Signature

Leticia Masci Ferreira, Vice President

Printed Name and Title

STATE OF: FLORIDA

COUNTY OF: VOLUSIA

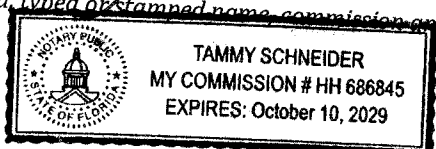
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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

Tammy Schneider

Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida



This document must be completed and returned with your Submittal

Subcontracts

Give full information about — " —

1	2	3	4	5	6	7
CLASSES OF WORK	DOT PROJECTS AND LOCATION OF WORK YOU ARE PERFORMING	CONTRACTOR SUBCONTRACTOR AMOUNT	AMOUNT SUBJECT TO OTHERS	BALANCE OF CONTRACT AMOUNT	UNCOMPLETED AMOUNT TO BE DONE BY APPLICANT AS PRIME CONTRACTOR AS SUBCONTRACTOR	ANTICIPATED COMPLETION
	TS824, SR 46, Seminole Co	\$16,117,310.19	\$5,133,645.00	\$11,977,895.19	\$10,000.00	
	TS841, SR 401, Breward Co	\$5,577,919.09	\$1,600,000.00	\$3,977,919.09	\$30,000.00	Completed on 5/7/26
	TS838, US 441, Orange Co	\$7,714,913.67	\$1,083,500.00	\$6,631,413.67	\$10,000.00	
	ES062, SR 417, Resurf, Seminole Co	\$1,398,818.51	\$7,784,889.00	\$9,613,293.51	\$300,000.00	June 26
	ES067-1, SR 404, Breward Co	\$10,698,165.67	\$4,114,545.00	\$6,583,610.67	\$100,000.00	Completed 3/17/26;
	TS680, I-95, Broward Co	\$29,845,663.00	\$3,704,400.00	\$26,141,263.00	\$20,000,000.00	August 26
	TS681, SR A1A Volusia County	\$12,993,379.63	\$1,700,000.00	\$11,293,379.63	\$10,500,000.00	June 26
	TS874, SR 408 Orange Co	\$9,523,246.37	\$2,150,000.00	\$7,373,246.37	\$10,500,000.00	March 27
					\$7,373,246.37	October 27
						July 27
CLASSES OF WORK	OTHER (Non-DOT) PROJECTS, OWNER, AND LOCATION OF WORK YOU ARE PERFORMING		DOT WORK	\$83,192,586.93	\$38,323,246.37	
			(Col. 5 Subtotal)			
	Seminole County - Oxford Road Improv	\$4,196,133.00	\$9,571,091.31	\$13,625,041.69	\$5,000,000.00	November 27
	City of Port Orange - Loop Trail (Spruce Creek)	\$1,633,961.00	\$500,000.00	\$1,133,961.00	\$30,000.00	July 26
	Volusia County G2-611 Canal	\$2,999,717.16	\$80,869.00	\$2,992,848.16	\$200,000.00	June 26
	Volusia County Corbin Park	\$6,949,572.97	\$646,025.00	\$6,300,547.97	\$5,200,000.00	November 27
	Thurston Knox Master Pump Station	\$3,505,791.97	\$250,000.00	\$3,235,791.97	\$2,200,000.00	April 27
	Volusia County Schools - University High Parent Loop	\$4,498,385.00	\$639,076.00	\$3,659,409.00	\$3,659,409.00	July 26
		\$117,1370.00	\$188,029.00	\$963,841.00		
			OTHER WORK	\$49,891,340.81		
				(Col. 5 Subtotal)		
			TOTAL UNCOMPLETED WORK ON HAND TO BE DONE BY YOU	\$17,273,250.00		
			GRAND TOTAL	\$55,596,496.37	\$0.00	
			Total of Columns 6 and 7 Must Be Filled In and Must Agree with Related Attachment(s), if finished.	\$55,596,496.37	\$0.00	

NOTE: Columns 3 and 4 to show total contract (or subcontract) amounts. Column 5 to be difference between columns 3 and 4. Amount in columns 6 or 7 to be uncompleted portion of amount in column 5. Contracts which individually do not exceed 3% of the total, and which, in the aggregate, amount to less than 20% of the total.

not yet begun; and regardless of its location and with whom contracted

Give full information about all of your contracts, whether prime or whether in progress or awarded but

between columns 3 and 4. Amount in columns 6 or 7 to be uncompleted portion of amount in column 5. All amounts to be shown to nearest \$100.00. The Contractor may consolidate and list as a single item all contracts which individually do not exceed 3% of the total, and which, in the aggregate, amount to less than 20% of the total.

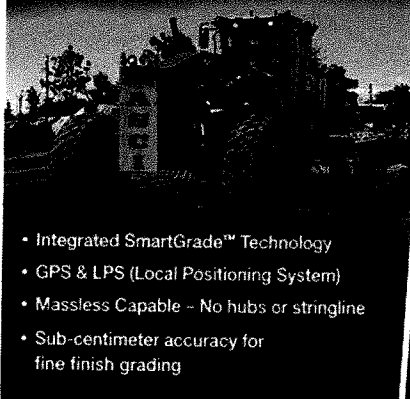
MASCI

GENERAL CONTRACTORS INC

TECHNOLOGY & MACHINE CONTROL CAPABILITIES

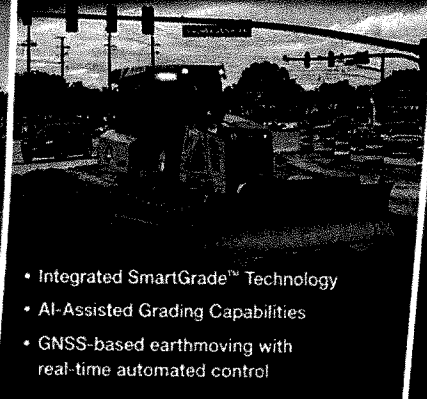
Advanced technology. Engineered models. Experienced people.
Delivering unmatched accuracy, efficiency and performance.

2026 JOHN DEERE 672
MOTOR GRADER



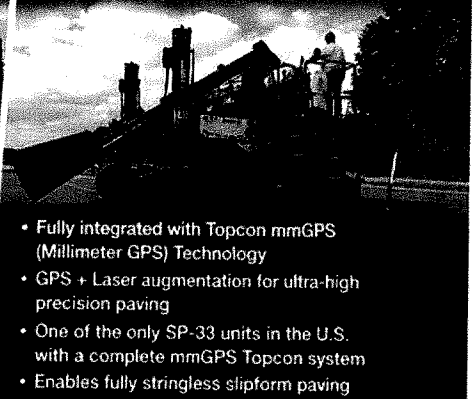
- Integrated SmartGrade™ Technology
- GPS & LPS (Local Positioning System)
- Massless Capable – No hubs or stringline
- Sub-centimeter accuracy for fine finish grading

2026 JOHN DEERE 700P
DOZER



- Integrated SmartGrade™ Technology
- AI-Assisted Grading Capabilities
- GNSS-based earthmoving with real-time automated control

2026 WIRTGEN SP-33
SLIPFORM PAVER



- Fully integrated with Topcon mmGPS (Millimeter GPS) Technology
- GPS + Laser augmentation for ultra-high precision paving
- One of the only SP-33 units in the U.S. with a complete mmGPS Topcon system
- Enables fully stringless slipform paving



ADVANCED POSITIONING & CONTROL SYSTEMS

- ✓ Topcon mmGPS Systems (Millimeter-level accuracy)
- ✓ Topcon Hiper XR GNSS Receivers (Multi-constellation precision)
- ✓ Robotic Total Stations (1" Accuracy)
- ✓ Multiple GPS Base & Rover Setups (Redundancy for continuous production)



MACHINE CONTROL & FIELD SOFTWARE

- ✓ Topcon GX-75 Machine Control Displays
- ✓ Topcon MC-R3 Controllers
- ✓ Pocket 3D Field Software (Real-Time Layout & Verification)
- ✓ FC-6400 Data Collectors (Rugged Field Tablets)



DIGITAL MODELING & ENGINEERED CONTROL

- ✓ Utilizes AGTEK Software for modeling, takeoffs & machine control integration
- ✓ All models developed by award-winning Ranger Engineering
- ✓ Models are **ENGINEERED, STAMPED & SEALED** – not simply constructed for machine use



STRINGLESS & MASSLESS CONSTRUCTION

- ✓ GPS-controlled earthwork
 - ✓ LPS-controlled precision grading
 - ✓ mmGPS-controlled slipform paving
- ALL WITHOUT STRINGLINE/STAKING



PROVEN PERFORMANCE IN HIGH-DEMAND ENVIRONMENTS

MASCI crews have successfully delivered projects in the most demanding, precision-driven environments:



FAA-Regulated Runway & Taxiway Construction
(Strict tolerances & operational sequencing)



DOT Roadway & Major Interstate Projects (High production & tight specs)



Critical Dam & Levee Systems
(Grade accuracy & structural integrity)



Complex Concrete Systems
(Slipform paving & multi-phase placements)



We deliver accuracy, quality and performance where it matters most.



LEADERSHIP, EXPERIENCE & INDUSTRY INVOLVEMENT

- Key personnel involved in machine control technology since its inception
- Worked directly with manufacturers to improve & refine products
- Deep expertise in field execution & digital modeling integration
- Proven ability to troubleshoot & optimize systems in real time



QUALITY CONTROL, VERIFICATION & ACCOUNTABILITY

- Real-time verification using GPS, LPS & Robotic Total Stations
- Continuous grade checks through Pocket 3D & rover systems
- Reduced dependency on delayed survey staking
- Immediate identification & correction of discrepancies = **Higher first-pass accuracy & less rework**

OUR DIGITAL CONSTRUCTION WORKFLOW



ENGINEERED MODEL
Built by Ranger Engineering
Stamped & Sealed



LOAD & CONTROL
Integrated with AGTEK,
Topcon Systems &
Machine Control



BUILD
Execute with GPS,
LPS & mmGPS
Precision



VERIFY & DELIVER
Real-time GC &
Documentation
Every Step

THE MASCI ADVANTAGE



HIGHER ACCURACY
Tighter tolerances,
less rework



ACCELERATED PRODUCTION
Lower schedule risk



ENGINEERED MODELS (STAMPED & SEALED)
Increased confidence for
Owners & Engineers



REDUCED SURVEY DEPENDENCY
Fewer delays,
more control



ADVANCED SYSTEMS
AI-assisted grading
& mmGPS paving



OPERATIONAL FLEXIBILITY
Effective in all
environments

MASCI
GENERAL CONTRACTORS INC

MASCI DOES NOT RELY ON TRADITIONAL STAKING AND INTERPRETATION—
WE BUILD, VERIFY, AND EXECUTE FROM ENGINEERED DIGITAL MODELS
WITH PRECISION CONTROL FROM START TO FINISH.

**BUILT ON TECHNOLOGY.
DRIVEN BY EXPERIENCE.
DELIVERING RESULTS.**

Equipment #	Year	Make/Model
DUMP TRUCKS		
DPT002-6387	2006	Mack CV713
DPT007-8803	2010	Mack GU713
DPT014-7057	2009	Mack GU713 - Black
DPT015-6201	2009	Mack GU713 - Orange
DPT016-7375	2009	Mack GU713 - Orange
DPT021-8147	2010	Mack GU713 - Orange
DPT023-9196	2004	Mack CV713 - White/Red
DPT024-4764	2007	Mack CTP713 - White
DPT025-4762	2007	Mack CTP713 - White
DPT027-7238	2009	Mack GU713 - Blue
DPT029-7236	2009	Mack GU713 - Blue
DPT030-7237	2009	Mack GU713 - Blue
DPT031-7352	2016	Mack CU713 - White
DPT033-1617	2015	Kenworth T800
DPT034-8856	2011	Mack GU713 - White/Red Body
DPT039-6293	2023	MACK GR64B
DPT040-8005	2018	MACK GU713
DPT041-8008	2018	MACK GU713
DPT042-4367	2021	FRHT M2106
DPT043-8757	2024	MACK GR64F
DPT044-8751	2024	MACK GR64F
DPT045-1876	2023	MACK GR64F
DPT046-8531	2025	MACK GR64F
DPT047-4653	2025	MACK GR64F
DPT048-0611	2026	ISUZU NRR
DPT049-5978	2025	MACK GR64F
DPT050-5974	2025	MACK GR64F
DPT051-7360	2025	MACKGR64F
DPT052-7357	2025	MACKGR64F
DPT053-8683	2025	MACKGR64F
DPT054-7878	2026	MACK GR84FR
DPT055-7885	2026	MACK GR84FR
DPT056-5692	2025	MACK MD7 42R
TRACTOR TRAILER TRUCKS		
TTR003-6404	2010	Mack CH613
TTR004-6532	2009	Mack GU713
TTR005-7559	2009	Mack GU713
TTR006-6784	2015	MACK - CXU613
TTR007-6737	2015	MACK - CXU613
TTR008-4863	2015	Peterbilt 389

TTR009-0499	2024	KENWORTH W990 HEAVY HAUL
TTR010-0277	2023	MACK P164T DAY CAB
TTR011-7580	2017	MACK GU813
TTR012-3687	2024	MACK PI64T DAY CAB

SERVICE TRUCKS

SER001-8265	2006	Freightliner M2-106
SER003-0906	2009	GMC C-5500 (BLUE)
SER003-8585	2016	Dodge Ram 4500
SER004-0983	2004	Freightliner FL-70
SER005-6684	2007	International 4300
SER006-1228	2016	Isuzu NQR Service Truck - RED
SER007-2175	2011	RAM 5500 SLT - White
SER008-1095	2015	Freightliner M2-106
SER009-0052	2023	ISUZU FTR
SER010-0243	2025	Freightliner M2-106 plus
SER011-1731	2025	ISUZU NRR
SER012-0588	2024	RAM 5500
SER014-1724	2025	ISUZU FTR
SER015-0183	2024	RAM 4500
SER016-6762	2023	CHEVY 5500
SER017-5373	2023	CHEVY 5500

WATER TRUCKS

WT001-3498	1992	Ford Water Truck F700
WT002-4648	1995	International 4700
WT003-6800	1999	International 4700
WT005-6304	2001	Isuzu COE Water Truck
WT006-9028	2015	Freightliner m2 106 medium duty
WT007-9109	2014	Freightliner m2

MISC. TRUCKS

FBT003-8944	2000	Int'l. Flatbed 4700
FBT-4351	2010	Isuzu Flatbed NPR
FBT-1476	1970	Mack Dump
FBT-0943	2013	Isuzu Flatbed NPR
FBT-7022	2023	ISUZU NRR
FBT-3678	2009	INTERNATIONAL 7400 6X4
FBT-4497	2018	FREIGHTLINER M2 106 4X2
FBT-0396	2026	ISUZU NPR HD

SUPERVISOR / MGMT TRUCKS

PKU006-6028	2006	Chevy C-1500 - Blue
PKU011-8590	2011	Toyota Tundra
PKU013-0862	2012	Toyota Tundra

PKU014-2687	2012	Toyota Tundra
PKU-3096	2018	Toyota Tundra 4x2 - White
PKU-0419	2017	Toyota Tundra- White
PKU-6039	2019	Toyota Tundra - White
PKU-7700	2016	Nissan Titan XD
PKU-7962	2022	Chevy Silverado 1500
PKU-7747	2019	Toyota Tundra
PKU-2549	2019	Toyota Tundra
PKU-9753	2025	Toyota Tundra Crewmax
PKU-7076	2025	Toyota Tacoma SR 4x2 double cab
BACKHOES		
BH004-3882	2010	Caterpillar 420E
BH005-0543	2013	Caterpillar 420 FIT
DOZERS		
DZ003-0351	2013	Caterpillar D5K
DZ006-1927	2013	Komatsu D65WX-17
DZ007-1583	2025	JOHN DEERE 700 P-TIER
EXCAVATORS		
EXC001-7358	1987	Komatsu PC 200
EXC006-3812	2006	Kobelco SK135SRLC
EXC010-0062	2007	Hyundai ROBEX450LC-7A
EXC012-1463	2009	Hitachi ZX135HYD
EXC013-0215	2010	Komatsu PC308USLC-3
EXC014-0288	2010	Komatsu PC308MSLC
EXC016-0321	2012	Caterpillar M318D
EXC017-0136	2008	Komatsu PC308USLC-8
EXC-6339	2006	Komatsu PC50MR-2
EXC-8614	2017	Kubota KX040-4R1T w/ 6 way Blade
EXC-0464	2019	Kubota KX057-4R1A Excavator
EXC-0274	2017	Hyundai 220LC-9A Hydraulic Excavator
EXC-1051	2005	Kobelco SK250
EXC-1243	2019	John Deere 135G FT
EXC-5525	2020	KOBELCO SK140SRLC-7
EXC-5452	2017	Komatsu PC360LC-11
EXC-1425	2018	LINKBELT 300X4 HYDRAULIC
EXC-3616	2022	JOHN DEERE 85G
EXC-0106	2022	KUBOTA KX060-5 HYDRAULIC
EXC-0191	2008	KOMATSU PC308USLC-3E0
EXC-1930	2023	HYUNDAI R35Z

EXC-1485	2020	JOHN DEERE 135G HYDRAULIC
EXC-1490	2023	LINK BELT 75X3
EXC-2184	2023	HYUNDAI R35Z-9A
EXC-1155	2018	LINKBELT 490X
EXC-1102	2023	KOBELCO SK55SRX-7
EXC-0189	2024	HITACHI ZX50U-5N
EXC-0317	2024	MIVA VA 20
EXC-1921	2021	LINK-BELT 145X4DZ
EXC-0018	2025	HYUNDAI HX355ALCRD
EXC-9201	2023	KOMATSU PC360LC-11
EXC-0031	2025	HYUNDAI HX355ALCRD
EXC-0032	2025	HYUNDAI HX355ALCRD
EXC-2262	2024	KOBELCO SK555RX-7
EXC-1934	2024	KOBELCO SK555RX-7

LOADERS

LDR002-7045	2006	John Deere 444J
LDR003-1702	2006	John Deere 444J
LDR004-7637	2006	John Deere 544J
LDR005-7297	2006	John Deere 544J
LDR007-0768	2006	Hyundai HL757-7
LDR008-7877	2007	John Deere 544J
LDR010-0090	2008	Hyundai HL740-7A
LDR015-2020	2012	John Deere 544K
LDR016-1131	2011	John Deere 544K
LDR017-9761	2017	John Deere 544KII
LDR019-6145	2017	Case 621F Rubber Tired
LDR020-6291	2017	Case 521F Rubber Tired
LDR023-1729	2021	John Deere 544P
LDR024-2012	2021	John Deere 544K-II
LDR025-0876	2022	HYUNDAI HL940
LDR026-0354	2018	HYUNDAI HL960
LDR027-0711	2020	HYUNDAI HL960
LDR029-0433	2022	HYUNDAI HL940A
LDR030-0401	2023	JOHN DEERE 544-G TIER
LDR031-0464	2023	JOHN DEERE 544-G TIER
LDR032-0242	2024	HYUNDAI HL975
LDR035-1113	2025	JOHN DEER 544-G TIER
LDR036-7235	2025	JOHN DEERE 324P-TIER

SWEEPERS

SWP002-6191	2006	Lay Mor 6HC
SWP004-3160	2008	Lay Mor 8HC

SWP005-2223	2008	Lay Mor 8HC
SWP006-3525	2010	Lay Mor 8HC
SWP009-7923	2012	Kubota MX5100
SWP010-7285	2016	Lay Mor Sweepster SM300
SWP-5739	2014	John Deere 5055E Broom Tractor
SWP-9619	2008	Rosco 4820 Broom
SWP-7791	2015	Rosco Sweep Pro 4930
SWP-6883	2019	Kubota MX5200HST Tractor
SWP-4320	2013	Lay Mor SM300
SWP-4276	2013	Lay Mor 8HC
SWP-4344	2013	Lay Mor 8HC
SWP-2776		Kubota L4760
SWP-7719	2022	KUBOTA MX5400
SWP-7326	2019	ROSCO RB50 BROOM`
SWP-2562	2024	ODRA MT4H ROAD SWEEPER/CHEVY 5500XD
SWP-0817	2022	LAYMOR SM300
SWP-1477	2021	ROSCO NV55
SWP-8051	2025	FREIGHTLINER M2
SWP-9070	2020	ROSCO NV55
SWP-5735		ROSCO NV55
SWP-7667	2025	ODRA MT4H ROAD SWEEPER/ISUZU NRR CABOVER
ROLLERS		

RL011-0962	2008	Caterpillar CB-434D
RL013-1074	2010	Caterpillar CB-434D
RL-0152	1999	Dynapac CS141
RL-9813	2014	Leeboy/Rosco 915
RL-2235	1984	Hyster C340B Tandem
RL-1786	2014	Sakai SW850II Asphalt Roller
RL-0177	2014	Sakai SW850II Asphalt Roller
RL-0254	2015	Hamm H7i
RL-2749	2019	Hamm HD12VV
RL-0798		HYUNDAI HR30T-R
RL-1065	2012	HAMM HD 70
RL-1486	2018	BOMAG BW211D-5 84" SMOOTH DRUM
RL-0264		Sakai SW850ND
RL-1239		DEMO DYNAPAC CC1000
RL-2122	2008	LEEBOY/TRUPAC 915
RL-3405	2022	DYNAPAC CC950 DOUBLE DRUM
RL-6894	2023	HAMM HD12VV ASPHALT ROLLER

RL-6424	2023	DYNAPAC CC950 DOUBLE DRUM
RL-7018	2023	DYNAPAC CA1400D
RL-3880	2022	DYNAPAC CA3500D
RL-1231	2024	BOMAG BW120AD-5
RL-1050	2022	BOMAG BW206AD-5
RL-0354	2019	HAMM HD120IVO
RL-1101	2025	BOMAG BW28RH
RL-1045	2022	BOMAG BW 206 AD-5
RL-1043	2022	BOMAG BW 206 AD-5
RL-1038	2022	BOMAG BW 206 AD-5

SKID STEERS

SKD006-1423	2011	Caterpillar 279C
SKD-4158	2016	Takeuchi TL8RW
SKD-4838	2019	Caterpillar 246D Skid Steer
SKD-6558	2020	John Deere 333G
SKD-0261	2014	Cat 236D skid steer loader
SKD-1368	2013	Takeuchi TL 230
SKD-7498	2021	John Deere 332G
SKD-4552	2022	MANITOU 1350RT TRACK LOADER
SKD-6239	2021	JOHN DEERE 325G RUBBER TRACK
SKD-0862	2023	CAT 246D3
SKD-4046	2023	JOHN DEERE 325G
SKD-5975	2023	JOHN DEERE 325G
SKD-4052	2021	JOHN DEERE 333G
SKD-1144		CAT 246D3
SKD-0791	2025	TAKEICHI TL8R2R
SKD-9787	2025	JOHN DEERE 330 P-TIER
SKD-5577	2025	JOHN DEERE 325G
SKD-7685	2025	JOHN DEERE 325G
SKD-5566	2025	JOHN DEERE 325G

PAVING EQUIPMENT

PX008-0977	2014	Hamm HD120VO
PX010-0008		Blaw-Knox RW-100 Road Widener
PX011-6389	2014	International Leeboy MAXIII
PX012-1327	2017	Wirtgen W200i Milling Machine
PX014-0731	2004	Roadtec SB2500C Shuttle Buggy
PX015-0002	2019	Kenworth Tack Truck w/Etnyre Centennial Tank
PX017-0738	2004	Roadtec SB2500C Shuttle Buggy
PX018-1133	2014	CAT Weiler E1250A Shuttle Buggy

PX019-0008	2019	Kenworth Tack Truck w/Etnyre Centennial
PX020-1034	2015	Wirtgen W210i Milling Machine
PX021-0049	2017	Vogele 2003-3i
PX022-0117	2018	VOGELE SUPER 1300-3i
PX023-0071	2017	VOGELE SUPER 2003-3i
PX024-1165	2016	Wirtgen W210i Milling Machine
PX025-0054	2017	VOGELE 2003-3i PAVER
PX026-0067	2017	VOGELE 2003-3i PAVER
PX027-0034	2020	Wirtgen W220Fi tracked cold planer
PX028-2963	2024	CAT PC306 24" HIGH FLOW COLD PLANER
PX029-3237	2020	DYNAPAC MF2500CS
PX030-1002	2022	BOMAG BMF2500
PX031-3045	2024	KENWORTH T380
PX032-0552	2025	VOGELE SUPER 1700-3i
PX033-0177	2021	VOGELE SUPER 2003-3i
PX034-0079	2019	WIRTGEN W210Fi
PX035-0188	2025	WIRTGEN W210 XF
PX036-0406	2026	VOGELE 1700-3i
ROAD GRADERS		
RG002-9379		Leeboy Grader 685B
RG005-0196	2019	SANY SMG200 14'
RG006-0013	2019	SANY SMG200 12'
RG007-0869	2025	JOHN DEERE 672G
TRAILERS		
TRL005-9077	1994	Wabash Flatbed Trailer
TRL006-0127	2006	Lark Storage Trailer
TRL007-912T	2006	Lark Storage Trailer
TRL010-0216	2007	Witzco Challenger / RN35
TRL012-5177	2009	VMA/Pace/Cargo
TRL013-3646	2009	EASD Red Tilt Trailer ET20-14
TRL016-9535	2012	Haulmark Utility
TRL017-3710	2013	Big T Black / Trailer
TRL018-0753	2013	Freedom Trailer
TRL019-4412	2013	Bendron/Titan Cargo
TRL020-1900		Mobile 60x12Office Trailer
TRL022-0298	2013	Econoline Trailer
TRL024-0445	2015	Eager Beaver / Low Boy 50-60 Tn
TRL-8977	2015	FVCG/Cargo Trailer
TRL-0124	1997	Dorsey Dump Trailer (Aluminum)
TRL025-T201	2005	SSP - Dewatering Trailer
TRL026-9701	2003	ASPT Dewatering Trailer
TRL-2622	2017	Anvil Trailer AT7X12TA2 (7x12)

TRL029-9567	2011	Leeboy Trailer
TRL-3742	2017	COTC Trailer
TRL-0068	2018	Witzco Challenger Low Boy Trailer
TRL-1089	2019	Anvil Trailer AT7X12TA2 (7x12)
TRL-3279	2019	Covered TA Gold series white (7x12)
TRL-3306	2019	Down to Earth DTE58G29 8' black
TRL-7524	2019	Anderson Trailer 6x14
TRL-3479	2019	Down to Earth DTE58G29 8' black
TRL-9869	2020	Anderson Trailer
TRL-7123	1984	Etnyre LWR/ tr6
TRL-0384	2006	DETA
TRL-6244	2021	PDQ UT6X12TA BLACK 12FT
TRL-3451	2022	BIG TEX 16' BUMPER PULL
TRL-2740	2022	BIG TEX 16' BUMPER PULL
TRL-2272	2024	TRAILSTAR ALUMINUM DUMP
TRL-1013	2023	CARRY ON TRAILER/UTILITY LANDSCAPE
TRL-0320	2024	WITZCO RG52 DETACHABLE GOOSENECK
TRL-5094	2024	SURE TRAC UTILITY TRAILER
TRL-6160	2025	MAC ALUMINUM DUMP
TRL-4899	2023	NVAE 6X10
TRL-7249	2023	NVAE 7X18
TRL-0616	2025	BIG TEX UTILITY TRAILER
TRL-0785	2025	CARRY-ON TRAILER
TRL-7976	2025	NVAE 7X16+4 TILT BED
TRL-1164	2025	TCTR VT BLK
TRL-1934	2025	CVRD WAGON CARGO
TRL-5024	2025	7X12 DIAMOND CARGO TRL
TRL-3784	2025	KRAFTSMAN 25 TON TAG LOW PRO w LIFT AXLE HP-50 PS-LA
TRL-7422	2026	MAC FL SPEC DUMP SS
MISC. EQUIPMENT		
MIC006-0623	2006	Gomaco GT3600 G21
MIC007-2899	2016	John Deere Mower Z540M-48A
MIC008-1099	1989	Caterpillar R80 Rough Terrain Forklift
MIC010-9145	2014	Terex-Finlay 684 Screener
MIC011-6670	2017	Buffalo Turbine EFI Cyclone KB5
MIC012-1530	2007	Genie Z80 Manlift
MIC013-0167	2014	Caterpillar Asphalt Compactor 44B
MIC015-0269	2002	Caterpillar RM-250C
MIC018	2014	GENIE GS1930 19' ELECTRIC
MIC019-2762	2016	DOOSAN G30P-5 5500 LB PNEUMATIC TIRE
MIC020-0368	2016	Snorkel A46JRT boom lift 4X4
MIC021-7939		TEREX FINLAY 120RS CRUSHER
		All Pro Concrete Pulverizer Direct Connect

MIC022-0506	2022	TOYOTA 8FGU25 FORKLIFT
MIC023-5389	2018	GENIE SX125XCV
MIC024-9916	2021	BELL B30E ARTICULATING DUMP
MIC025-3871	2014	JEEP
MIC026-0485	2025	JOHN DEERE MOWER Z960M 60
MIC027-9388	2011	TOYOTA 4D AVALON
MIC028-3569	2025	WACKER G25 GENERATOR

	2023	KUNDEL 8X48 SPREADER BARS 4(CT)
GPS/Navigators		
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2017	Garmin dezl 570 LMT
	2015	Garmin 465 LMT
	2015	Garmin 465 LMT
Storage/Office Trailers		
		Storage Trailer
	2010	William Scotsman 20x8 Container
		Modspace Unit 088490 8x20 Office
Aphalt Plant		Counter Flow Continuous Drum Mix Plant - 250 tons per hour/storage of 1000 tons; good condition with regular maintenance & updates Location: 427 Timaquan Trail; Edgewater, FL 32132
SHOP EQUIPMENT		
	2001	Bobcat Electric Welder
		Lincoln Welder
		Lincoln Welder
		Miller Welder
		Miller Welder
		3" Track Pump

		Hatz 4" Pump
		Hatz 4" Pump
	2006	Thompson Pump
	1998	John Deere 6" 4045D
		Silent Knight 8" Pump
		John Deere 8" Pump
		Wellpoint 8" Pump
		Thompson Hydraulic Pump
		G Walker 3" Pump
	2012	G Walker 3" Pump
	2012	G Walker 3" Pump
	2012	G Walker 3" Pump
		Sewer Pressure Tester
	2014	Birmingham YCL
	2015	Pressure Pro PP2E3027HC
	2008	Tapmate 1544
	2013	Ferguson Tapping Machine
	1995	Sullivan Air Compressor
	1995	Sullivan Air Compressor
		Ironhorse Air Compressor
	2002	ITC Receiver PD4
		Rigid Threading Machine
	2012	RSE 15' Rolling Straight
	1974	Gamefish Boat
		Sandblaster
	2009	Honda EM500 Generator
		Ultra 2500 Generator
		Black Max Generator
		Tradewinds TP60ULT3
		Tradewinds TP60ULT3
		5000 Powermate Generator
		8000 Dayton Generator
		WEN 9000E
	2010	Delta 17950L
	2012	Weber SRV620
	2012	Weber SRV620
	2014	Weber SRV620
	2014	Weber SRV620
	2017	Weber SRV620
	2010	Wacker BS60-4S
		Cushion Cut R-20
	2011	Weber CR3
	1996	Pierce Arrow

		Road Plates
	2014	Magnum MLT3060
	2014	Magnum MLT3060
	2014	Magnum MLT3060
	2011	Magnum MLT3060
	2012	Magnum MLT3060
	1990	Flashing Arrow
		Wen 5500
		Wen 5500
	2005	Thompson 10" Pump
	2014	Magnum MLT3060
	2014	Magnum MLT3060
	2015	Magnum MLT3060
	2019	Welder Generator Gas Engine Drive Bobcat 250 Multi-Process
LT005-9709	2019	Terex RL4 Light Tower
LT006-9149	2014	Boss Towable Light Tower
	2006	Ingersoll Rand Towable Air Compressor
	2020	Compactor BPU 3050A
	2022	Compactor BPU 3050A
	2022	Compactor BPU 3050A
#71 in Masci Equip	2021	CAT AIR COMPRESSOR/PORTABLE (atco)
#98 MASCI EQUIP	2015	MAGNUM PRO MLT6S
	2023	WACKER G25/G35 GENERATOR
#107 MASCI LIST		MUSTANG LF88
#107 MASCI LIST		MUSTANG LF88
#107 MASCI LIST		MUSTANG LF88
LT001-4807	2021	Allmand night-light pro II
LT002-4799	2021	Allmand night-light pro II
LT003-4791	2021	Allmand night-light pro II
LT004-4781	2021	Allmand night-light pro II
LT007-4673		Magnum MLT3060
LT008-2371		LIGHTTOWER
LT009-1008		LIGHTTOWER
LT010-0674	2024	ATLAS COPCO HILIGHT V5+
LT011-0671	2024	ATLAS COPCO HILIGHT V5+
LT012-4468	2022	GENERAC LIGHT TOWER
LT013-8436	2022	GENERAC LIGHT TOWER
LT014-8434	2022	GENERAC LIGHT TOWER
LT015-4471	2022	GENERAC LIGHT TOWER
LT016-2072	2022	WACKER NEUSON LTV6 TOWABLE TOWER
LT017-2718	2021	TEREX RL4 TOWABLE LIGHT TOWER

[illegible]

		Wacker
		Sakai PF150
		Sakai PF150
		Wacker
	Generators	
		Centurion
		Rigid
		Magnum
		Champion
		Honda EG500
		Husky
		Husky
		TroyBuilt
		Husky
	2013	TroyBuilt
		Northstar
	Chain Saws	
		Stihl 310
		Echo
		Stihl MS250
		Stihl 310
		Stihl 310
		Stihl MS290
		Stihl MS250
		Stihl MS250
		Stihl MS250
		Echo
		Stihl
		Stihl
	Cut Off Saws	
		Stihl TS420
		Stihl 460
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Skill
		Stihl 420
		Stihl TS500i
		Stihl 420
		Stihl 420

		Stihl TS500i
		Stihl 420
		Stihl 420
		Rigid C51049
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
		Stihl 420
	2020	Stihl TS 420
	2025	Stihl TS 420-z
	2020	Stihl TS 420
	Drills	
		Hitachi
		Dewalt
		Bosch
		BoschHD19-2
		Milwaukee
		Dewalt
		Dewalt
		Bosch HD19-2
	Roto Hammer	
		Hitachi DH38YE
		Hitachi DH38YE
		Hitachi DH38YE
		Makita
		Hitachi DH38YE
		Makita
		Allied Hydraulic Hammer
	Lasers & Accessories	

		Topcon PP14B
		CST/Berger Level
		David White LT800LTU
		CST/Berger Tripod
		Beam Aligner 4700
		Topcon ATB4 Scope
		CST/Berger PL20 Laser
		Tripod
		Topcon ATB4 Scope
		CST/Berger Tripod
		Topcon TPL-L4 Laser
		David White LT800LTU
		CST/Berger Level
		ADC Tripod
		Northwest Level
		CST/Berger Tripod
		Tripod
		Topcon ATB4 Scope
		Topcon L4B Laser
		Spectra LL100 Laser
		CST/Berger 54-135W Scope
		CST/Berger Laser
		David White LT800LTU
		CST/Berger Scope
		Tripod
		Tripod
		CST/Berger PL20 Laser
		CST/Berger PL20 Laser
	2009	CST/Berger PL20 Laser
		Berger CX49DWPL20
	2017	David White LT8-300LTU
	2017	David White LT8-300LTU
	Misc. Pumps	
		3" Water Pump
		Water Pump
		Cable Water Pump
		Water Pump
		Water Pump
		Cable Water Pump
		Honda Water Pump

		Cable Water Pump
		Water Pump
		Water Pump
		Cable Water Pump
		Test Pump
		Honda Water Pump
		Honda Water Pump
		Wacker Mudhog Pump
		Water Pump
		Water Pump
		Cable Water Pump
		Cable Water Pump
		Cable Water Pump
	Misc Tools	
		Stihl Backback Blower BR700
		Stihl Backpack Blower BR600
		Central Pneumatic 1/2"
		Florida Pneumatic 3/4"
		Hitachi 3/4"
		Aqua Tapset
		Schonstedt Metal Detector
		Stihl Backpack Blower
		Manhole Blower
		Boring Machine
		Boring Machine
		QF902H 9HP Blower
	GAS DETECTOR w/ car charger	
	2014	MC2-XWHM-Y-NA detector
	2014	MC2-XWHM-Y-NA- detector
	2014	MC2-XWHM-Y-NA -detector
	2014	GA-VPA-1 charger
	2014	GA-VPA-1 charger
	2014	GA-VPA-1 charger
Asphalt Plant		Counter Flow Continuous Drum Mix Plant - 250 tons per hour/storage of 1000 tons; good condition with regular maintenance & updates Location: 427 Timaquan Trail; Edgewater, FL 32132

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: City of New Smyrna Beach
Contact Person: Kyle Fegley, P.E., City Engineer
City, State: New Smyrna Beach, Florida
Telephone Number: (386) 410-2811
Email Address: kfegley@cityofnsb.com
Description of goods/services provided: Drainage, underground utilities, etc.
Contract Amount: \$11,167,209.24 and \$1,465,484.04 (2 projects)
Start/End Date of Contract: 2017-2019, 2025-2026
2. Company Name: Flagler County (Graham Swamp & Pedestrian Bridge)
Contact Person: Amy Stoger
City, State: Flagler County, Florida
Telephone Number: (386) 313-4047
Email Address: astroger@flaglercounty.gov
Description of goods/services provided: Drainage, concrete work, pipe culvert, jack-n-bore, etc.
Contract Amount: \$9,858,121.65
Start/End Date of Contract: 2020-2023
3. Company Name: City of Edgewater
Contact Person: Matt A. Creel, Chief City Engineer/Infrastructure Project Manager
City, State: Edgewater, Florida
Telephone Number: (386) 424-2400 ext 4009
Email Address: mcreel@cityofedgewater.org
Description of goods/services provided: Drainage (60", 54", 36" endwalls installed); manholes; MES installed
Contract Amount: \$3,008,030.89
Start/End Date of Contract: 01/05/26 to substantial complete 5/11/26

This document must be completed and returned with your Submittal.

MASCI GENERAL CONTRACTORS, INC.

GENERAL CONTRACTORS

5752 S. Ridgewood Ave., Port Orange, FL 32127

Tel. (386) 322-4500: FAX (386) 322-4600

June 5, 2026

Masci General Contractor has been in business since 1995 in Port Orange, Florida. The company is FDOT certified and works for FDOT as well as municipalities mainly in the District 2 and District 5 area.

Masci is a general contractor with full capabilities and experience to self-perform site work, road construction, cast-in-place concrete, drainage system construction, pipeline construction, landfills, airport runway/taxiway construction, water treatment plant work, and wastewater treatment plant work. In addition, Masci has extensive experience in design-build projects. The subcontracting companies used by Masci are also FDOT certified in their respective scope of work. Our previous jobs and references are attached within this pre-bid submission packet.

Leonel A, Masci P.E., President and CEO, has over 30 years of experience in the construction industry as a project manager and as a general contractor on numerous government and private construction projects. His experience in the construction industry is founded through both his invested time in construction as well as formal his formal education and licensure as a Professional Engineer.

Education and Certifications

- Bachelor of Science in Civil Engineering
University of Massachusetts at Lowell (1994)
- State of Florida General Contractor
- Professional Engineer, Lic. No.: 68418
- State of Florida Underground Utility Contractor
- Certified by Boston Water & Sewer Commission
- Hydraulics License
- Florida Engineering Society
- OSHA Certified

Leticia M. Masci Ferreira, Vice President, has over 20 years' experience in Construction office management. She is skilled in all aspects of accounting, coordination and administration on asphalt paving, underground utilities including, water, sewer, force main, reclaimed water and drainage structure projects. Leticia has overseen numerous projects and his experience ranges from large government capital improvement programs to private development projects. She continuously demonstrates the drive and skill of administrating projects both on time and within budget.

Education and Certifications

- University of Central Florida
- Asphalt Paving Technician Level 1 & 2
- Asphalt Plant Level 1 & 2
- QC Manager
- Certified Stormwater Inspector
- Final Estimates Level 1 & 2
- Notary Public, State of Florida

Ignacio Masci, Secretary/Project Manager/Superintendent, has over 22 years' experience in project management. He is skilled in all aspects of asphalt paving, underground utilities including water, sewer, force main, reclaimed water and drainage structures installation. Ignacio has managed numerous projects and his experience ranges from large government capital improvement programs to private development projects. He continuously demonstrates the drive and skill of completing projects both on time and within budget.

Education and Certifications

- Florida Certified Stormwater Inspector
- Advanced Maintenance of Traffic Certified
- Certified Operator
- OSHA Certified

David Jewett, project manager, has nine plus years' experience in project management. He is skilled in all aspects of asphalt manufacturing and paving. David has managed numerous projects and his experience ranges from asphalt paving to water/wastewater projects in municipal, federal, and private sectors. He continuously demonstrates the drive and skill of completing projects both on time and within budget.

Education and Certifications

- Civil Engineering – Pennsylvania College of Technology, 2016
- Maintenance of Traffic Advanced Certified
- Asphalt Mix Design Certified
- Asphalt Paving Level 1 & 2 Certified
- Asphalt Plant Level 1 & 2 Certified
- Quality Control Management Certified

Chris Wright, Project Manager, has 17 years' experience in project management. He is skilled in all aspects of sales, underground utilities including water, sewer, force main, reclaimed water and drainage structures installation. Chris has supervised numerous projects and his experience ranges from large government capital improvement programs to private development projects. He continuously demonstrates the drive and skill of completing projects both on time and within budget.

Education and Certifications

- Bachelor of Science – Ball State University, Indiana 2003
- Maintenance of Traffic Certified
- OSHA Certified

Mike Trail, Superintendent, has over 20 years of experience in project supervising. He is skilled in all aspects of storm water and drainage construction. Mike has managed numerous projects and his experience ranges from large government capital improvement projects to private development projects. He continuously demonstrates the drive and skill to complete projects both on time and within budget.

Education and Certifications

- Advanced Maintenance of Traffic Certified
- OSHA Certified

Masci General Contractors, Inc. has a diverse and qualified group of Job Superintendents and Foreman in the field that lead the construction crews. There are

twenty construction crews, and the manpower and equipment can be dedicated as needed throughout the project.

Sincerely,

A handwritten signature in black ink, appearing to be 'Leonel Masci', written over the printed name.

Leonel Masci
Masci General Contractor, Inc.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1Name: On Point Surveying, Inc.Description of Work: SurveyingPercent of Contract Price: less than 1%Previous Experience Together: ☒ Yes ☐ No**Subcontractor No. 2**Name: Blevins Road Boring, Inc.Description of Work: Jack and BorePercent of Contract Price: 8%Previous Experience Together: ☒ Yes ☐ No**Subcontractor No. 3**Name: Chinchor ElectricalDescription of Work: ElectricalPercent of Contract Price: 2%Previous Experience Together: ☒ Yes ☐ No**Subcontractor No. 4**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 5**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Leticia Masci Ferreira, Vice President, on behalf
(Print Name and Title)

of Masci General Contractor, Inc. ("Company"), certify that Masci General Contractor, Inc.
(Company Name) (Company Name)

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

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

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

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

Masci Corporation

COMPANY NAME

Leticia Masci Ferreira

PRINT NAME

STATE OF FLORIDA

[Signature]

SIGNATURE

Vice President

TITLE

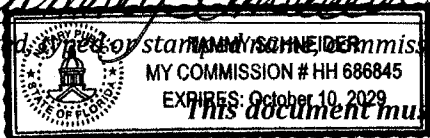
COUNTY OF: VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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

[Signature] Notary Public, State of Florida

Printed, typed or stamped name of notary and expiration:



FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): ITB # 26-06

Business Name: Masci General Contractor, Inc.

Contact Person/Title: Leticia Masci Ferreira, Vice President

Mailing Address: 5752 S. Ridgewood Avenue

City, State, Zip: Port Orange, FL 32127

Phone Number: (386) 322-4500

Email address: leticiamasci@mascigc.com

Physical Presence of Business:

☐ Headquarters

☒ Principal Place of Business

Within Legal Boundaries:

☒ City of Port Orange

☒ Volusia County

☒ State of Florida

FEIN (Federal Employer Identification Number): 20-2045800

Business Structure: ☒ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

Masci General Contractor, Inc.

Name of Business

STATE OF: FLORIDA

COUNTY OF: VOLUSIA

Authorized Signature

Leticia Masci Ferreira, Vice President

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

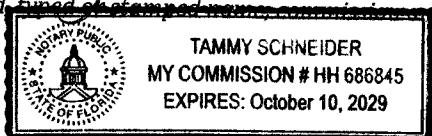
☒ Is personally known to me; or ☐ has produced _____ as identification.

Tammy Schneider

Notary Public, State of

Florida

Printed, typed, stamped name, commission number and expiration:



This document must be completed and returned with your Submittal



City of Port Orange

Business Tax Receipt

Masci General Contractor Inc.

5752 RIDGEWOOD AVE

ISSUE DATE: 11/04/2025**EXPIRATION DATE:**

09/30/2026

OWNER NAME: MASCI GENERAL CONTRACTOR INC.**BUSINESS TAX #:** L-0000001954**CLASSIFICATION:**

CONTRACTOR - GENERAL (CLASS A)

COMMENTS: State Licensed Contractor**STATE LICENSE #:** CGC1518864 Expires 8/31/2026
(IF APPLICABLE)**TOTAL PAID:** \$115.00**CONDITIONS:**

THIS TAX RECEIPT MUST BE POSTED OR DISPLAYED AND VISIBLE IN YOUR PLACE OF BUSINESS.

This receipt represents a tax only. It is not a competency card and is not meant to be a certificate of the holder's ability to perform the service in which he or she is licensed. The issuance of this business tax receipt does not constitute a permit to act in violation of any city codes, regulations or ordinances.

The renewal period for Local Business Tax starts July 1st and runs through September 30th.

We notify business owners in July as a courtesy to allow time for processing payments. It is the receipt holder's responsibility to renew before the expiration date to avoid penalties.

Penalties are applied in accordance with Chapter 205 of the Florida Statutes.

FORM 7.12 - E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Cambridge Station Pump Upgrades

Solicitation Number: ITB# 26-06

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

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

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

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

Leticia Masci Ferreira, Vice President

Print or Type Name, Title

Signature of Affiant

20-2045800

Federal Employer ID Number (FEIN)

1454791

E-Verify Number

STATE OF FLORIDA

COUNTY OF: VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS

ARTICLE I PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and Masci General Contractor, Inc. (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

ARTICLE II RESPONSIBILITIES

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.

Company ID Number: 1454791

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.

a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.

6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.

7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.

a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly

Company ID Number: 1454791

employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status

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(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon

reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see M-795 (Web)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with

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Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and

- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify

case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.

4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the

employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.
6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:
 - a. Scanning and uploading the document, or
 - b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).
7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.
8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.
2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.
- E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to,

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Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.



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Approved by:

Employer Masci General Contractor, Inc.	
Name (Please Type or Print) Leticia M Ferreira	Title
Signature Electronically Signed	Date 09/30/2019
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 09/30/2019

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Information Required for the E-Verify Program	
Information relating to your Company:	
Company Name	Masci General Contractor, Inc.
Company Facility Address	5752 South Ridgewood Ave Port Orange, FL 32127
Company Alternate Address	
County or Parish	VOLUSIA
Employer Identification Number	202045800
North American Industry Classification Systems Code	237
Parent Company	
Number of Employees	100 to 499
Number of Sites Verified for	1 site(s)



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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

FL

1

Company ID Number: 1454791

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name	Leticia M Ferreira
Phone Number	3863224500
Fax	3863224600
Email	leticiamasci@masciac.com

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This list represents the first 20 Program Administrators listed for this company.

**FORM 7.13 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

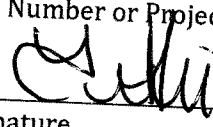
**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Masci General Contractor, Inc.
Organization Name

Leticia Masci Ferreira, Vice President
Name and Title of Authorized Representative

ITB#26-06
Bid Number or Project Name


Signature

June 5, 2026
Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

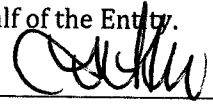
**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH
FOREIGN ENTITIES OF CONCERN**

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

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

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

Date: June 5, 2026

Signed: 

Entity: Masci General Contractor, Inc.

Name: Leticia Masci Ferreira

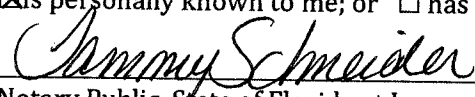
Title: Vice President

STATE OF: FLORIDA

COUNTY OF: VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th day of June, 2026, by Leticia Masci Ferreira and who:

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



Notary Public, State of Florida at Large:

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



My commission expires: 10/10/2029

This document must be completed and returned with your Submittal

REMOVE FROM BID DOCUMENTS

FORM 7.15 - NO BID RESPONSE

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

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

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

Solicitation: ITB # 06 CAMBRIDGE PUMP STATION UPGRADES

Company Name: _____
Contact Person Name & Title: _____
Address: _____
Telephone: _____ Email Address: _____

Please check a reason for a "no response":
☐ Specifications "too tight" compared to actual brand or manufacturer (please explain below)

☐ Insufficient time to respond

☐ Specifications unclear (please explain below)

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

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

☐ Unable to meet specifications

☐ Unable to meet bonding requirements

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

☐ Unable to meet insurance requirements

☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information: _____

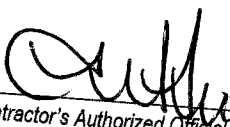
If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements
(Required for each bid or offer exceeding \$100,000)

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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



Signature of Contractor's Authorized Official

Leticia M. Ferreira, Vice President

Name & Title of Contractor's Authorized Official

Date: June 5, 2026

This document must be completed and returned with your Submittal



ATTACHMENT 1 SCHEDULE OF UNIT PRICING
ITB #26-06
CAMBRIDGE PUMP STATION UPGRADES

Name of Business: **Masci General Contractor, Inc.**
Contact Person: **Leticia Masci Ferreira, Vice President**
Email Address: **leticiamasci@mascigc.com**
Authorized Signature: *[Signature]*

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM #	DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	EXTENDED PRICE
GENERAL					
1	Mobilization/General Conditions	LS	1		\$651,379.00
2	Insurance, Performance and Payment Bond	LS	1		\$85,050.00
3	Project Closeout/As-Built Drawings	LS	1		\$19,800.00
4	Preconstruction Video	LS	1		\$1,000.00
5	Construction Testing (Pressure, Density)	LS	1		\$25,430.00
6	General Site Restoration	LS	1		\$78,900.00
7	Clear & Grubbing	AC	0.6	\$58,900.00	\$35,340.00
8	Excavation	CY	2,470	\$27.90	\$68,913.00
9	Embankment	CY	6,497	\$29.50	\$191,661.50
10	Performanc Turf, Sod	SY	1,600	\$5.35	\$8,560.00
11	Dewatering	LS	1		\$375,000.00
12	Pump Station Demolition, including but not limited to: - Sandbags - Pile Wall with Concrete Cap - Drainage Structure - Existing Piping - Pipe Supports - Outfall Structure - Screens	LS	1		\$155,953.00
13	Bypass Pumping	LS	1		\$215,300.00
PROPOSED IMPROVEMENTS					
14	54" DIP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	150	\$7,548.00	\$1,132,200.00
15	72" PCCP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	475	\$7,259.00	\$3,448,025.00
16	Pipe Supports	EA	6	\$5,900.00	\$35,400.00
17	54" DI Check Valve	EA	3	\$350,000.00	\$1,050,000.00
18	54" DI Gate Valve	EA	3	\$389,176.00	\$1,167,528.00
19	72" Pipe Header	LS	1		\$479,850.00
20	Jack & Bore Installation (54-In DIP with 72" STL casing)	LF	250	\$12,539.00	\$3,134,750.00
21	Floating Turbidity Barrier	LF	700	\$10.50	\$7,350.00
22	Pipe Culvert, Optional Material, Round, 10"	LF	40	\$159.75	\$6,390.00
23	Pipe Culvert, Optional Material, Round, 36"	LF	200	\$337.25	\$67,450.00
24	Articulating Concrete Block Revetment System, 6" Thickness	SY	1,800	\$99.50	\$719,100.00
25	Inlet, Dt Bot, Type D, <10'	EA	1	\$29,900.00	\$29,900.00
26	Inlet, Dt Bot, Type E, <10'	EA	1	\$9,700.00	\$9,700.00
27	Manhole Type J-7, <10'	EA	2	\$11,475.00	\$22,950.00
28	Mitered End Section, Optional Round, 36"	EA	1	\$5,500.00	\$5,500.00
29	Wapro WaStop NES 48" Flange Outlet Backflow Preventer	EA	2	\$139,650.00	\$279,300.00
30	Sediment Barrier	LF	450	\$3.00	\$1,350.00
31	Floating Sediment Barrier	LF	600	\$10.50	\$6,300.00
32	Staked Turbidity Barrier	LF	575	\$10.50	\$6,037.50
33	Structural Platform	LS	1	\$197,856.00	\$197,856.00
34	Oufall Structure	LS	1	\$159,800.00	\$159,800.00
35	Pump Station Concrete	CY	100	\$412.54	\$41,254.00
36	Electrical	LS	1		\$800,000.00
37	Allowance for Unforeseen Construction Conflicts	LS	1		Too be Determined by Owner
TOTAL PRICE					\$14,720,277.00

LEGEND:	
LS	- LUMP SUM
CY	- CUBIC YARD
SY	- SQUARE YARD
EA	- EACH
AC	- ACRE
LF	- LINEAR FEET



FLORIDA SURETY BONDS, INC.

620 N Wymore Road Suite 200
Maitland, FL 32751
(407) 786-7770 ♦ Fax (407) 786-7766

Toll Free (888) 786-BOND
www.FloridaSuretyBonds.com
Kim@FloridaSuretyBonds.com

June 4, 2026

RE: Masci General Contractor, Inc.

To Whom It May Concern,

It is a privilege to be the surety agents for Masci General Contractor, Inc. for over 24 years. Bonds are currently written through Arch Insurance Company located at Harborside 3, 210 Hudson St., Suite 600, Jersey City, NJ 07311-1107, which is Best Rated "A+, XV" and has a Treasury Listing of \$266,744,000.

We anticipate no difficulties in providing surety bonds for Masci General Contractor, Inc., for projects in the \$150,000,000 single, \$200,000,000 aggregate range. This letter is not a commitment to provide any bonds unless all underwriting requirements including contract review are met prior to issuing any bonds. Neither our agency, nor the surety are liable for any damages relating to this letter or project.

We are pleased to be working with a contractor of this caliber. Should you award a contract to Masci General Contractor, Inc., we are sure you will be pleased with their ability to perform and willingness to cooperate.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

Kim Niv
Vice President



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

March 10, 2026

MASCI GENERAL CONTRACTORS, INC
5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FLORIDA 32127

RE: CERTIFICATE OF QUALIFICATION

The Department of Transportation has qualified your company for the type of work indicated below.

FDOT APPROVED WORK CLASSES:

DRAINAGE, FLEXIBLE PAVING, GRADING, GRASSING, SEEDING AND SODDING, HOT PLANT-MIXED BITUM. COURSES, INTERMEDIATE BRIDGES, MINOR BRIDGES, SIDEWALK, CURB & GUTTER, MILLING, UNDERGROUND UTILITIES (WATER & SEWER).

Unless notified otherwise, this Certificate of Qualification will expire **6/30/2027**.

In accordance with Section 337.14(1), Florida Statutes, an application for qualification must be filed within (4) months of the ending date of the applicant's audited annual financial statements.

If the company's maximum capacity has been revised, it may be accessed by logging into the Contractor Prequalification Application System via the following link:

[HTTPS://fdotwpl.dot.state.fl.us/ContractorPreQualification](https://fdotwpl.dot.state.fl.us/ContractorPreQualification)

Once logged in, select "View" for the most recently approved application, and then click the "Manage" and "Application Summary" tabs.

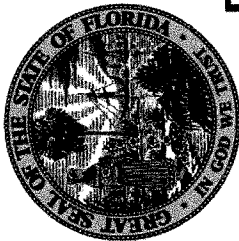
The company may apply for a Revised Certificate of Qualification at any time prior to the expiration date of this certificate according to Section 14-22.0041(3), Florida Administrative Code (F.A.C.), by accessing the most recently approved application as shown above and choosing "Update" instead of "View." If certification in additional classes of work is desired, documentation is needed to show that the company has performed such work.

All prequalified contractors are required by Section 14-22.006(3), F.A.C., to certify their work underway monthly in order to adjust maximum bidding capacity to available bidding capacity. You can find the link to this report at the website shown above.

Sincerely,

James E. Taylor II, Prequalification Supervisor
Contracts Administration Office

JTII



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

MASCI, LEONEL ANDRES

MASCI GENERAL CONTRACTOR, INC.
5752 S RIDGEWOOD AVE
PORT ORANGE FL 32127

LICENSE NUMBER: CGC1518864

EXPIRATION DATE: AUGUST 31, 2028

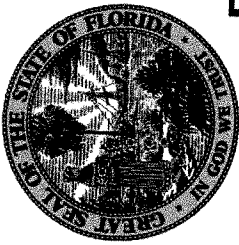
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ISSUED: 05/26/2026

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Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

MASCI, LEONEL ANDRES

MASCI CORPORATION
5752 S RIDGEWOOD AVE
HARBOR OAKS FL 32127

LICENSE NUMBER: CUCA56854

EXPIRATION DATE: AUGUST 31, 2028

Always verify licenses online at MyFloridaLicense.com

ISSUED: 05/26/2026

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Ron DeSantis, Governor

Melanie S. Griffin, Secretary



FBPE
FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL ENGINEERS

THE PROFESSIONAL ENGINEER HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

MASCI, LEONEL ANDRES

5752 SOUTH RIDGEWOOD AVE
PORT ORANGE FL 32127

LICENSE NUMBER: PE68418

EXPIRATION DATE: FEBRUARY 28, 2027

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

Detail by Entity Name

Florida Profit Corporation

MASCI GENERAL CONTRACTOR, INC.

Filing Information

Document Number	P04000169369
FEI/EIN Number	20-2045800
Date Filed	12/17/2004
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	06/01/2010
Event Effective Date	NONE

Principal Address

5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FL 32127

Mailing Address

5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FL 32127

Registered Agent Name & Address

Ferreira, Leticia Maria Masci
5752 S RIDGEWOOD AVE
PORT ORANGE, FL 32127

Name Changed: 06/26/2025

Address Changed: 01/12/2021

Officer/Director Detail

Name & Address

Title President

MASCI, LEONEL
5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FL 32127

Title VP

MASCI, ANDRES
5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FL 32127

Title S

Masci, Ignacio
5752 S Ridgewood Ave
Port Orange, FL 32127

Title VP

Ferreira, Leticia Maria Masci
5752 SOUTH RIDGEWOOD AVE
PORT ORANGE, FL 32127

Annual Reports

Report Year	Filed Date
2025	02/05/2025
2025	06/26/2025
2026	01/12/2026

Document Images

01/12/2026 -- ANNUAL REPORT	View image in PDF format
06/26/2025 -- AMENDED ANNUAL REPORT	View image in PDF format
02/05/2025 -- ANNUAL REPORT	View image in PDF format
02/08/2024 -- ANNUAL REPORT	View image in PDF format
02/09/2023 -- ANNUAL REPORT	View image in PDF format
01/27/2022 -- ANNUAL REPORT	View image in PDF format
01/12/2021 -- ANNUAL REPORT	View image in PDF format
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01/15/2016 -- ANNUAL REPORT	View image in PDF format
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04/03/2014 -- AMENDED ANNUAL REPORT	View image in PDF format
01/10/2014 -- ANNUAL REPORT	View image in PDF format
07/25/2013 -- AMENDED ANNUAL REPORT	View image in PDF format
02/19/2013 -- ANNUAL REPORT	View image in PDF format
04/09/2012 -- ANNUAL REPORT	View image in PDF format
01/06/2012 -- ANNUAL REPORT	View image in PDF format
01/20/2011 -- ANNUAL REPORT	View image in PDF format
06/01/2010 -- Amendment	View image in PDF format
05/17/2010 -- Amendment	View image in PDF format
01/14/2010 -- ANNUAL REPORT	View image in PDF format

Detail by Entity Name

[01/27/2009 -- ANNUAL REPORT](#)
[01/14/2008 -- ANNUAL REPORT](#)
[02/12/2007 -- ANNUAL REPORT](#)
[01/19/2006 -- ANNUAL REPORT](#)
[04/29/2005 -- ANNUAL REPORT](#)
[12/17/2004 -- Domestic Profit](#)

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Search Corporation for Maryland Secretary of State

BID BOND**BID BOND**

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that Masci General Contractor, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 5752 S. Ridgewood Avenue, Port Orange, FL 32127, Tel.: (386) 322-4500, (hereinafter called "PRINCIPAL"), and Arch Insurance Company, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at Harborside 3, 210 Hudson St., Suite 600, Jersey City*, Tel: (201) 743-4000 (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of Five Percent of Amount Bid dollars and (-----)/100 (\$---5%---), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated May 29th, 2026, for:

Project Name/Bid No.: CAMBRIDGE PUMP STATION UPGRADES / ITB # 26-06

Project Address: Port Orange, Florida

Legal Description: Port Orange, Florida

Description of Work: CONSTRUCTION OF A NEW DISCHARGE STRUCTURE, PIPING AND BERM

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this 29th day of May, 2026, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

* NJ 07311-1107

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: Masci General Contractor, Inc.

Signature

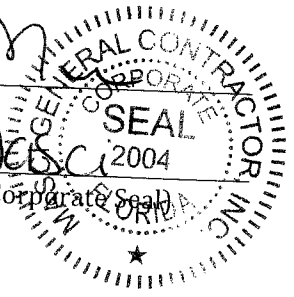
Leticia M. Ferreira VP
Corporate Officer & Title

ATTEST:

Signature

Ignacio Mescua
Corporate Secretary (Affix Corporate Seal)

WITNESSES:



ATTEST:

Signature

Susan L. Reich
Corporate Secretary (Affix Corporate Seal)

*Inquiries: 407-786-7770

SURETY: Arch Insurance Company

Attorney-in-Fact (signature)

Jeffrey W. Reich*, Attorney-in-Fact

Name & Title

Jeffrey W. Reich*, FL Licensed Resident Agent

Name of Local Resident Agent

Harborside 3, 210 Hudson St., Suite 600

City, State, Zip

Jersey City, NJ 07311-1107

Telephone: 201-743-4000

A.M. Best No.: 003186

NAIC No.: 11150

STATE OF FLORIDA

COUNTY OF ORANGE

Before me this day personally appeared Jeffrey W. Reich

(affiant), who, being

duly sworn,

deposes

and

says

that

he/she

is

the

Attorney-in-Fact

for

the

Arch Insurance Company

(corporate surety)

and that this person has been authorized by

Arch Insurance Company

(corporate surety)

to execute the foregoing bond on behalf of the

Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

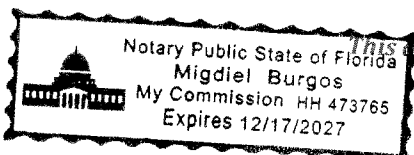
Jeffrey W. Reich

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th day of May, 2026, by Jeffrey W. Reich and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration: 12/17/2027

END OF BID BOND



This document must be completed and returned with your Submittal

ARCH INSURANCE COMPANY
STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2025

Assets

Cash & Cash Equivalents in Banks	554,447,449
Bonds owned	8,143,759,995
Stocks	1,171,346,534
Premiums in course of collection	1,333,011,378
Accrued interest and other assets	2,308,659,170

Total Assets

\$ 13,511,224,526

Liabilities

Reserve for losses and adjustment expenses	\$6,011,651,482
Reserve for unearned premiums	2,115,944,389
Ceded reinsurance premiums payable	760,077,804
Amounts withheld or retained by company for account of others	133,463,845
Reserve for taxes, expenses and other liabilities	1,211,110,562

Total Liabilities

\$10,232,248,082

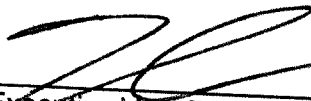
Surplus as regards policyholders

3,278,976,444

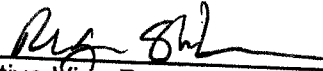
Total Surplus and Liabilities

\$13,511,224,526

By:


Executive Vice President, Chief
Financial Officer and Treasurer

Attest:


Executive Vice President,
General Counsel and Secretary

State of New Jersey)

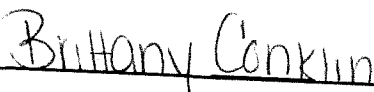
SS

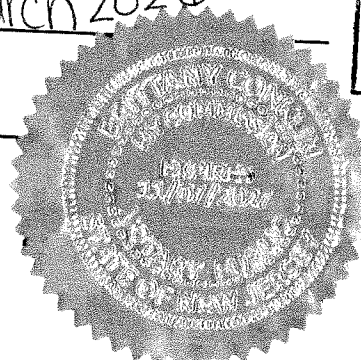
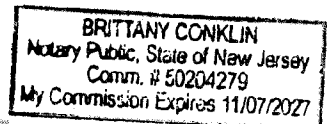
County of Hudson)

Thomas James Ahern, Executive Vice President, Chief Financial Officer and Treasurer and
Regan Abby Shulman, Executive Vice President, General Counsel and Secretary being duly sworn,
of ARCH INSURANCE COMPANY, Missouri; and that the foregoing is a true and correct
statement of financial condition of said company, as of December 31, 2025.

Subscribed and sworn to before me, this 4 day of March 2026

Notary Public





Confidential information

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Cheryl Foley, Emily Golecki, Jeffrey W. Reich, Kim E. Niv, Lisa Roseland, Robert P. O'Linn, Sarah K. O'Linn, Susan L. Reich and Teresa L. Durham of Maitland, FL (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding One Hundred and Fifty Million Dollars (150,000,000.00). This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on August 31, 2022, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"**VOTED**, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on August 31, 2022:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on August 31, 2022, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. **In Testimony Whereof**, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 30th day of September, 2025

Attested and Certified

Regan A. Shulman

Regan A. Shulman, Secretary

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

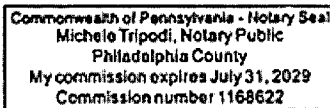


Arch Insurance Company

Stephen C. Ruschak

Stephen C. Ruschak, Executive Vice President

I, **Michele Tripodi**, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Michele Tripodi

Michele Tripodi, Notary Public
My commission expires 07/31/2029

CERTIFICATION

I, **Regan A. Shulman**, Secretary of the Arch Insurance Company, do hereby certify that the attached **Power of Attorney dated September 30, 2025** on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 29th day of May, 2026.

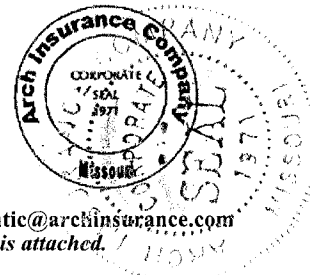
Regan A. Shulman

Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



*To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com
Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.*

**Request for Taxpayer
Identification Number and Certification**

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the
requester. Do not
send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.) Masci General Contractor, Inc.	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor ☒ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate ☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. ☐ Other (see instructions)	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ <i>(Applies to accounts maintained outside the United States.)</i>
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions. ☐	
	5 Address (number, street, and apt. or suite no.). See instructions. 5752 South Ridgewood Avenue 6 City, state, and ZIP code Port Orange, Florida 32127 7 List account number(s) here (optional)	Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

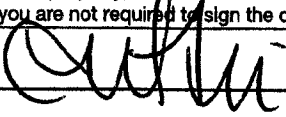
Social security number								
			-					
or								
Employer identification number								
2	0	-	2	0	4	5	8	0

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person 	Date 01/12/26
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they



MASCCON-01

BJONES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/22/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ASSOCIATES AGENCY, INC. 125 W. Country Club Dr Tampa, FL 33612	CONTACT NAME: Brittany Jones		
	PHONE (A/C, No, Ext): (813) 988-1234	FAX (A/C, No): (813) 988-0989	
	E-MAIL ADDRESS: certs@associatesins.com		
INSURED Masci General Contractor Inc 5752 S Ridgewood Ave Port Orange, FL 32127	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Bitco Insurance Companies		20095
	INSURER B: SiriusPoint Specialty Insurance Company		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			CLP 3 759 342	7/1/2025	7/1/2026	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CAP 3 759 344	7/1/2025	7/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$ 10,000
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			CUP 3 759 345	7/1/2025	7/1/2026	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC 3 761 014	8/8/2025	8/8/2026	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	☒ Pollution/Profession			CPPL D0002484 00	7/1/2025	7/1/2026	Occ 2,000,000/Agg 4,000,000
A	☒ Installation Floater			CLP 3 759 342	7/1/2025	7/1/2026	Builders Risk 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

For Insurance Purposes

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION



April 16, 2026

RE: Letter of Reference for Masci General Contractor

To whom it may concern:

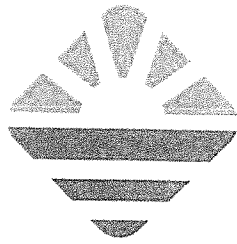
I am pleased to recommend Masci General Contractor for your upcoming construction project. Masci is currently serving as the prime contractor on the largest single construction project ever undertaken in Seminole County, and their performance has been strong despite numerous underground utility and drainage conflicts.

Masci has been consistently responsive and proactive working collaboratively with the County and project partners to resolve challenges effectively. The project remains well ahead of schedule, and the completed work reflects their commitment to quality and timely delivery.

I confidently recommend Masci for your consideration.

Respectfully,

Stephen L. Miller, P.E.
Senior Construction Project Manager



New Smyrna Beach ... UTILITIES ...

Date: April 16, 2026

RE: Masci General Contractor, Inc.

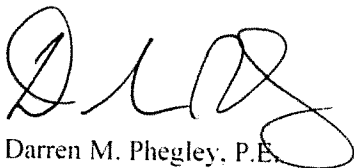
To Whom It May Concern,

I am writing today to formally recommend Masci General Contractor, Inc (Masci). Masci recently completed a stormwater project for the City of New Smyrna Beach entitled North Atlantic Avenue Drainage Improvements, Lakewood Street to Inlet Street, ITB#19-24-ENG. The watermain replacement associated with the stormwater project was bid at the same time as the stormwater project and upon project award by the City of New Smyrna Beach, New Smyrna Beach Utilities (NSBU) entered into contract with Masci to complete the watermain replacement. This project was entitled North Atlantic Ave Watermain Replacement.

The watermain project consisted of approximately 3,000 LF of 10-in PVC watermain, one 12x10 tapping sleeve and valve, long/short side services, fire hydrant assemblies, valves, and connecting the new watermain to seven existing cross street watermain. Also included in this project was the adjustment or replacement of multiple 4-in sewer laterals that conflicted with the new stormwater piping. Asbestos Cement pipe removal and disposal, roadway base and asphalt paving was also included. The project was located beachside in a primarily residential area, directly between the Atlantic Ocean and the Indian River, which offered plenty of challenges.

Masci successfully completed the project on time, under budget, and with no issues or concerns. The project was a positive experience for NSBU. I recommend Masci for similar projects, and look forward to the opportunity to work with Masci again in the future.

Should you require anything further, please feel free to contact me directly.



Darren M. Phegley, P.E.
Civil Engineering Manager



210 Sams Avenue, New Smyrna Beach, FL 32168
Phone: (386) 410-2811 Fax: (386) 410-2804
www.cityofnsb.com

REFERENCES - PROJECTS COMPLETED

Project Name/Location:	Turbull Bay Road Paved Shoulders New Smyrna Beach, Volusia County	
Type of Project/Services:	Add paved shoulders, milling, paving, drainage improvements, striping, etc.	
Owner/Agent:	Volusia County Wayne Jackson (386) 561-8655	
Contract Amount:	\$3,815,189.51	
Completed:	2025	
Project Name/Location:	E54B1 International Speedway Boulevard Daytona Beach, Volusia County	
Type of Project/Services:	Milling, resurfacing, inlets, manholes, pipe work, sidewalk, curb work, sheet piling etc.	
Owner/Agent:	Florida Department of Transportation Brad Bauknechy (386) 872-7794	
Contract Amount:	\$12,167,843.53	
Completed:	2025	
Project Name/Location:	E59B2 Bike Path Trail Myrtle Avenue from 10th St. to Lytle Ave. (SR-44) Volusia County	
Type of Project/Services:	12' multi-use bike trail/path, drainage improvements, etc.	
Owner/Agent:	Florida Department of Transportation Greg Shelton (407) 948 9021	
Contract Amount:	\$3,086,899.81	
Completed:	2024	
Owner/Agent:	Florida Department of Transportation / Pinnacle Doug Schumann dschumann@pinnaclecei.com (407) 496-9627	
Contract Amount:	\$ 10,858,007.49	
Completed:	2024 **FDOT - District 5 Roads & Streets Builder of the Year 2025**	
Project Name/Location:	FDOT #T5727, SR 5, Volusia County, Florida SR 5, from Brevard Co Line to South St, Volusia County, Florida	
Type of Project/Services:	milling, paving, grading, drainage, concrete, guardrail, signs, striping	
Owner/Agent:	Florida Department of Transportation / Mehta Engineering Anu Shah anu.shah@stvinc.com (850) 341-6114	
Contract Amount:	\$ 6,972,041.32	
Completed:	2023	
Project Name/Location:	FDOT #E57A1, SR 600, Volusia County, Florida SR 5, from Brevard Co Line to South St, Volusia County, Florida	
Type of Project/Services:	milling, paving, grading, drainage, concrete, signs/signals, striping	
Owner/Agent:	Florida Department of Transportation / AE Engineering Chris Nolan cnolan@wsbeng.com (904) 574-7086	
Contract Amount:	\$ 5,312,936.32	
Completed:	2023	
Project Name/Location:	Graham Swamp Trail & Pedestrian Bridge over SR 100, Flagler County, Florida Graham Swamp Trail, Palm Coast, Florida	
Type of Project/Services:	milling, paving, bridge, grading, drainage, concrete, signs/signals, striping	
Owner/Agent:	Flagler County Board of County Commissioners Amy Stroger astroger@flaglercounty.gov (386) 313-4047	
Contract Amount:	\$ 9,478,640.33	
Completed:	2023	

Project Name/Location: FDOT #E57A4, SR 442, Volusia County, Florida
Type of Project/Services: SR 442, from W of I-95 to US 1, Volusia County, Florida
Owner/Agent: milling, paving, grading, drainage, concrete, signs/signals, striping
Florida Department of Transportation / Mehta Engineering
Aun Shah ashah@mehtaeng.com
(850) 341-6114
Contract Amount: \$ 7,425,368.89
Completed: 2024

****FDOT - Smoothest Pavement of the Year Award 2024****

Project Name/Location: FDOT #E59B7 SR 415, Volusia County
Type of Project/Services: Milling and Resurfacing - Pilot Project using 3D Paving
Owner/Agent: Florida Department of Transportation
Rick Coe
(386) 257-3831 Frederick.Coe@dot.state.fl.us
Contract Amount: \$ 8,845,045.09
Completed: 2024

Project Name/Location: FY24 Annual Road Resurfacing, Titusville, Florida
Type of Project/Services: Various Streets
Owner/Agent: milling & paving
City of Titusville
Kevin Cook kevin.cook@titusville.com
(321) 383-5704
Contract Amount: \$ 1,589,544.95
Completed: 2024

Project Name/Location: 2024 Citywide Paving Project, City of Ormond Beach, Florida
Type of Project/Services: Various Streets
Owner/Agent: milling & paving
City of Ormond Beach
Alex Schumann alex.schumann@ormondbeach.org
(321) 567-3775
Contract Amount: \$ 791,358.35
Completed: 2024

Project Name/Location: SR 417 Resurfacing, Orlando, Florida
Type of Project/Services: SR 417, SR 528 to Berry Dease Rd, Orange County, Florida
Owner/Agent: milling & paving
Central Florida Expressway Authority (CFX) / RK&K
Chas Starr cstarr@rkk.com
(407) 923-4908
Contract Amount: \$ 16,029,260.78
Completed: 2024

Project Name/Location: FDOT #E5X97, Volusia, Flagler, Seminole & Brevard County Florida Resurfacing
Type of Project/Services: Various Streets
Owner/Agent: milling & paving
Florida Department of Transportation (FDOT)
Brahim Sahraoui brahim.sahraoui@dot.state.fl.us
Contract Amount: \$ 500,000.00 budgetary ceiling
Completed: 2023

Project Name/Location: E57A1 SR 92
Type of Project/Services: Volusia County
Owner/Agent: Milling, paving, pipe installation, concrete curb & gutter, sidewalks etc.
Florida Department of Transportation (FDOT)
Terry Phillips (386)785-7647
Contract Amount: \$5,312,936.32

Completed: 2023

Project Name/Location: Howland Boulevard Widening
Deltona, Volusia County

Type of Project/Services: Milling, paving, inlet & manhole installtion, RCP, PVC pipe, yard drains etc.

Owner/Agent: Volusia County
Wayne Jackson

(386) 561-8655

Contract Amount: \$13,390, 060.42

Completed: 2022

COMPLETED CONTRACTS AND REFERENCES - 10 YEARS					
CONTRACT AMOUNT	NAME OF PROJECT	YEAR COMPLETED	LOCATION	PROJECT CONTACT	SCOPE
\$4,847,128.64	Taxiway B Reconstruction & Runway 7-25 Pavement Removal	2026	New Smyrna Beach, Volusia County	City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32168	Demolition of existing, drainage installation, subbase installation, paving, airport striping & lighting
\$1,789,182.64	New Smyrna Beach City Wide Resurfacing 2026	2026	City of New Smyrna Beach, Volusia County	City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32168 Fegley, P.E. (386) 410-2811 kfegley@cityofnsb.com	Milling/Resurfacing and Drainage improvements of City Streets
\$1,570,607.59	North Atlantic Avenue Drainage Improvements	2026	City of New Smyrna Beach, Volusia County	City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32168 Fegley, P.E. (386) 410-2811 kfegley@cityofnsb.com	Drainage Improvements - pipe, inlets, manholes, 24" HDPE, concrete sidewalks/curbs/gutters
\$1,385,488.15	North Atlantic Avenue Watermain Replacement	2026	City of New Smyrna Beach Utilities	City of New Smyrna Beach Utilities 200 Canal Street New Smyrna Beach, Florida 32168 Phegley, P.E. (386) 424-3072 dphegley@nsbutil.com	Watermain Improvements - 2", 6", 10" and 12" with fittings; abandoned watermain; sewer lateral replacement
\$2,850,077.02	Casselberry Pavement Improvements	2025	Casselberry, Florida	City of Casselberry, 95 Triplet Lake Drive; Casselberry, Florida 32707 (407) 262-7725 Ext 1771 mbutcher@casselberry.org	Milling/Resurfacing; raising cross walks, microsurface
\$21,262,285.30	T5736 Seminole County SR 426/CR419	2025	Seminole County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL 32339 Scott Stagg (407) 319-7460 sstagg@drmp.com	Milling, resurfacing, drainage structures, pond, signing & pavement markings, hardscapes, utility improvements
\$12,167,843.53	E54B1 International Speedway Boulevard	2025	Daytona Beach, Volusia County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL 32339 Brad Bauknecht (386) 872-7794 bradb@newkirk_engineering.com	Milling, paving, overbuild, widening, drainage structures, ITS, utility improvements, signing, pavement markings, etc.

\$20,039,383.22	T5809 Flagler County SR 11	2025	Flagler County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL 32339 Charles Long (407) 415-0764 charles.long@stantec.com	Roundabout construction, milling/resurfacing, pavement markings, rumble strips, construction shared use trail, raise crosswalks
\$5,640,358.98	County Wide Resurfacing	2025	Volusia	Volusia County, 123 W. Indiana Avenue, Deland, FL	Milling & Paving
\$3,815,189.51	Turnbull Paved Shoulders	2025	New Smyrna Beach, Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL 32720 Wayne Jackson (386) 561-8655 wjackson@volusia.org	Resurfacing, grading, erosion control, widening, drainage improvements
\$2,338,952.13	Titusville Resurfacing	2025	City of Titusville, Brevard County	City of Titusville, 555 S. Washington Ave., Titusville, Florida 32781 Kevin S. Meulman, Public Works Manager (321)213-1954 kevin.meulman@titusville.com	Milling & Paving
\$577,132.11	Volusia Jail Resurfacing	2025	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL 32720 Lavey Lassiter (386) 677-2482 llassiter@volusia.org	Milling, paving, sidewalk installation, removal of trees & green space.
\$10,858,007.49	T5767 SR 528 **FDOT Builder of the Year**	2024	Brevard County	FDOT - District 5- 605 Suwannee Street, Tallahassee, FL 32339 Doug Schumann (407) 496-9627 dschumann@pinnaclecel.com	Milling/Resurfacing, cross slope correction, shoulder treatment, drainage improvements, guardrail modifications, reconstruction of bridge approach slab
\$3,086,899.81	E59B2 Bike Path Trail	2024	Volusia County	FDOT - District 5- 605 Suwannee Street, Tallahassee, FL 32339 Ernesto Saltar (386) 740-3416 ernesto.saltar@dot.state.fl.us	Drainage improvements, bike path trail, ditch piping, milling, & paving
\$500,000.00	E5x97-RO, roadway repair	2024	Volusia, Flagler, Seminole, Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL 32339	roadway repair, as needed
\$1,023,128.69	City of Ormond Beach 2023 Road Resurfacing	2024	City of Ormond Beach	City of Ormond Beach, Public Works, 22 S. Beach Street, Room 104, Ormond Beach, FL 32174m 386-676-3269	2023 Road Resurfacing
\$16,029,260.78	CFX - SR 417 Resurfacing	2024	CFX	Central Florida Expressway Authority,	Resurfacing
\$4,343,700.56	T5742- Wickham Rd @I95 Ramp	2024	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	improvements, road widening

\$787,145.48	E58A3 (sub to Chinchor)	2024	Brevard County	FDOT - 719 S. Woodland Blvd., Deland, FL 32720	improvements & resurfacing
\$5,361,981.28	E57A1 SR 600	2023	Volusia County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Resurfacing
\$844,923.00	G1T27- Graham Swamp Trail	2023	Flagler County	Flagler County Board of County Commissioners Stoger, Project Manager (386) 313-4047 astroger@flaglercounty.gov	Trail and Pedestrian Bridge over State Road 100
\$8,780,809.70	T5711 - Bridge Fiske	2023	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	SR 519 (Fiske Blvd) Bridge
\$13,106,590.67	Howland Blvd. Deltona, Widening	2022	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL 32720 Wayne Jackson (386) 561-8655 wjackson@volusia.org	Road Widening & Drainage Improvements
\$ 17,848,966.12	T5642 - SR46 Seminole County	2022	Seminole County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 399,844.00	City of Ormond Beach Roadway Resurfacing	2022	Volusia County	Alex Schumann, 22 South Beach St, Ormond Beach, FL.	Resurfacing
\$ 165,989.45	City of Titusville Neighborhood Services Department	2021	Brevard County	Kevin Cook, City of Titusville, 555 S. Washington Ave., Titusville, FL. (386) 567-3845	Minor Repairs
\$ 1,556,034.12	City of Titusville Annual Resurfacing - Public Works	2021	Brevard County	William Larese, 555 S. Washington Ave., Titusville, FL. (321) 567-3682	Resurfacing
\$ 237,197.28	City of Lake Mary Citywide Milling & Paving	2021	Seminole County	Kevin Smith, City of Lake Mary, 911 Wallace Ct. Lake Mary, FL.	Milling & Paving
\$ 345,460.13	City of Ormond Beach Roadway Repaving	2021	Volusia County	Alex Schumann, 22 South Beach St, Ormond Beach, FL.	Repaving
\$ 2,319,234.97	City of Palm Coast Street Resurfacing	2021	Flagler County	Tyler Gibson, City of Palm Coast, 160 Lake Ave Palm Coast, FL. (386) 986-3730	Resurfacing
\$ 5,811,030.74	T5681 - SR 400 (I-4) Seminole County	2021	Seminole County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 12,045,287.37	Riverwalk Phase III	2021	Seminole County	City of Sanford, 300 N. Park Ave. Sanford, FL. 32771, Bilal Iftikhar, (407) 688-5012	Trail Construction
\$ 1,331,946.72	Fort Florida Rd	2021	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL	Road Construction

\$ 4,976,836.09	T5680 Seminole County	2021	Seminole County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road+B28+A21:F29+A18+A21:F29
\$ 4,878,954.76	Williamson Blvd Widening	2021	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL.	Road Expansion+A2:F30
\$ 4,979,528.50	Design Build	2020	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL.	Design Build
\$ 1,514,579.45	S. Park Ave Stormwater	2020	Seminole County	City of Sanford, 300 N. Park Ave. Sanford, FL. 32771, Bilal Iftikhar, (407) 688-5012	Stormwater Improvements
\$ 2,204,501.12	T5670, SRA1A & SR520	2020	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 4,991,772.04	T5660 - US 1 @ SR 44	2020	Volusia County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 28,838,467.02	T5636 - I-95 - Palm Coast Pkwy to Flagler/St Johns County Line	2020	Flagler/St Johns County	FDOT - District 5 - Ronald Meade (386) 740-3401 Ron.Meade@dot.state.fl.us	Road Construction
\$ 7,136,709.34	T5625 SR 414 - Maitland Blvd	2020	Orange County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 1,490,648.98	E5202 - US 192 Turn Lanes	2019	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Turn Lane Construction
\$ 11,167,209.24	Iselsboro Subdivision Stormwater Improvements	2019	Volusia County	City of New Smyrna Beach, Kyle Fegley, (386) 410-2811	Stormwater Improvements
\$ 1,910,436.65	T5623 - SR 406	2019	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 3,502,651.17	North Mala Compr Basin Drainage	2019	Flagler County	Tyler Gibson, City of Palm Coast, 160 Lake Ave Palm Coast, FL. (386) 986-3730	Drainage Improvements
\$ 4,747,313.60	SR 408 Milling & Resurfacing	2019	Orange County	Central Florida Expressway Authority - Andrew Bailey, P.E.	Resurfacing
\$ 1,769,310.98	T5619 SR 5 (US 1) @ Reed Canal & Big Tree	2019	Volusia County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 53,327.90	Hopkins Ave Repair Patch	2019	Brevard County	Kevin Cook, City of Titusville, 555 S. Washington Ave., Titusville, FL. (386) 567-3845	Minor Repairs
\$ 1,237,008.73	Hopkins Ave RRR Improvements	2019	Brevard County	Kevin Cook, City of Titusville, 555 S. Washington Ave., Titusville, FL. (386) 567-3845	Road Construction
\$ 489,567.45	Lift Stations 3 & 34	2018	Volusia County	City of New Smyrna Beach, Kyle Fegley, (386) 410-2811	Lift Stations
\$ 911,050.05	Desoto Park SW	2018	Brevard County	City of Satellite Beach, 565 Cassia Blvd, Satellite Beach, FL	Road Construction
\$ 487,209.00	City of Ormond Beach 2018 Resurfacing	2018	Volusia County	City of Ormond Beach, Mike Dunn, (386) 676-3269 Dunnm@ormondbeach.org	Road Resurfacing
\$ 975,088.45	Stone Street Streetscape	2018	Brevard County	City of Cocoa	Street Scraping

\$ 345,317.10	E5U40 - Various County Roads Paving	2018	Seminole & Orange Counties	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Paving
\$ 483,218.60	E5U52 - SR 50 Outfall Drainage	2018	Orange County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Drainage Improvements
\$ 12,348,616.00	T5506, SR 600 (John Young Parkway), Kissimmee	2018	Osceola County	FDOT - District 5 - John E. Tyler, P.E., 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 1,833,753.12	T5546 Eau Gallie Blvd	2018	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 5,373,132.25	T5576 SR 434	2018	Seminole County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 23,900.00	Crosslife Church - Oviedo	2018	Seminole County	Crosslife Church - Barry Edwards 45 W Broadway St., Oviedo, FL (407) 365-3484	Parking Lot Paving
\$ 2,282,739.32	E5Y60 - SR 5 (US 1)	2018	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 287,189.33	Annual Road Resurfacing	2018	Brevard County	City of Titusville, Jesus Viera 555 S. Washington Ave, Titusville, FL	Resurfacing
\$ 1,861,785.13	Spring to Spring Trail, Phase VII-B	2018	Volusia County	Volusia County, 123 W. Indiana Avenue, Deland, FL 32720	Trail Construction
\$ 3,288,933.93	T5578, Orange Ave, Orlando	2018	Orange County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 5,357,590.18	T5554, SR A1A, Brevard	2017	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 1,569,373.88	WWTP #2 Driveway and Utility	2017	Lake County	City of Mount Dora, 510 N Baker St., Mount Dora, FL.	Treatment Plant
\$ 1,833,753.12	SR 434 at Florida Central Parkway	2017	Seminole County	Seminole County Board of County Commissioners, 1301 E. 2nd St. Sanford, FL 32771	Road Construction
\$ 1,219,508.60	City of Titusville Annual Road Resurfacing	2017	Brevard County	City of Titusville, Jesus Viera, 555 S. Washington Ave. Titusville, FL	Resurfacing
\$ 1,841,073.64	Oxford Road Complete	2017	Seminole County	City of Casselberry, 95 Triplet Lake Drive, Casselberry, FL.	Road Construction
\$ 1,085,603.74	T5553, SR 40, Ocala	2017	Marion County	Steven Fisher, FDOT - Ocala Operations	Road Construction
\$ 95,405.00	Emergency Sewer Repair - Riverside Dr	2017	Volusia County	Randy Coslow, City of Edgewater, (386) 424-2400	Sewer Repair
\$ 66,830.00	Hampton Inn & Suites, Parking Lot, West Melbourne	2017	Brevard County	Kevin Hartman, Advantage Concrete hartman78@mac.com	Parking Lot Paving
\$ 8,940,783.56	Central Beach Phase III Flood Mitigation Improvements	2016	Volusia County	City of New Smyrna Beach, Kyle Fegley, (386) 410-2811	Mitigation Improvements
\$ 2,178,372.00	Ft. Smith Blvd. Deltona, Section 4B	2016	Volusia County	City of Deltona	Road Construction

\$ 11,252,308.00	Howland Blvd. Deltona, Widening	2016	Volusia County	Wayne Jackson - Volusia Co. 386-736-5967 x12468	Road Expansion
\$ 501,311.00	Turnbull Bay Bridge Utilities	2016	Volusia County	City of New Smyrna Beach, Kyle Fegley, (386) 410-2811	Bridge Construction
\$ 1,837,115.00	T5545, SR 40, Ocala	2016	Marion County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 860,550.00	T5541, SR 406 Garden St., Titusville	2016	Brevard County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 1,019,727.00	Roosevelt Ave. - Satellite Beach	2016	Brevard County	City of Satellite Beach, 565 Cassia Blvd, Satellite Beach, FL	Road Construction
\$ 1,124,704.00	E5W88, SR 426 (Aloma Ave), Winter Park	2016	Orange County	FDOT - District 5 - 605 Suwannee St. Tallahassee, FL.	Road Construction
\$ 2,901,022.00	Atlantic Ave Sidewalk - Ponce Inlet	2016	Volusia County	Jim Price, Volusia County Inspector, 386-561-8666 jprice@co.volusia.fl.us	Road Construction
					Sidewalk Construction



CITY OF PORT ORANGE

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July 29, 2026

Sean W. Gellis, Esq.
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Re: Response to Masci Formal Bid Protest – ITB #26-06

Dear Mr. Gellis:

This letter constitutes my final decision regarding the Formal Bid Protest filed by Masci General Contractor, Inc. ("Masci") on June 28, 2026, challenging the City's intended award of ITB #26-06, Cambridge Pump Station Upgrades, to Gregori Construction, Inc. ("Gregori").

After careful review of Masci's protest, the bid submissions, the solicitation requirements, and applicable law, the City hereby denies the protest in its entirety and affirms its decision to recommend award of the contract to Gregori Construction, Inc.

The City sincerely thanks Masci for its participation in this competitive procurement. Masci is a well-established local contractor in the Port Orange community. The City values Masci's interest in this project and appreciates the time and resources Masci devoted to preparing a comprehensive bid response. Competitive bidding serves the public interest, and robust participation by qualified contractors benefits the City and its taxpayers.

Background

By way of background, the City publicly solicited bids for the Cambridge Pump Station Upgrades project under ITB #26-06. Three responsive bids were received and opened on June 5, 2026. Gregori submitted the lowest bid. Masci's bid was more than \$320,000 higher than Gregori's. On June 16, 2026, the City posted its Notice of Intent to Award the contract to Gregori. Masci timely filed its Notice of Protest on June 18, 2026, and submitted its Formal Bid Protest on June 28, 2026.

Legal Standards

Florida law grants public agencies broad discretion in awarding competitively bid construction contracts. A public body has wide discretion in soliciting and accepting bids for public

improvements, and its decision, when based on an honest exercise of this discretion, will not be overturned even if it may appear erroneous and even if reasonable persons may disagree. *Liberty Cty. v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982). To put it another way, even if the public entity makes an erroneous decision about which reasonable people may disagree, the discretion of the public entity to solicit, accept and or reject contract bids should not be interfered with by the courts, absent a showing of dishonesty, illegality, fraud, oppression or misconduct. *Sutron Corp. v. Lake Cty. Water Auth.*, 870 So. 2d 930 (Fla. 5th DCA 2004). This discretion may not be exercised arbitrarily or capriciously but must be based on facts reasonably tending to support the conclusions reached by the agency. *Miami-Dade Cty. v. Church & Tower*, 715 So. 2d 1084 (Fla. 3rd DCA 1998).

Section 255.20(1), Florida Statutes, requires municipalities to competitively award public construction projects exceeding \$300,000 to an appropriately licensed contractor. The statute expressly authorizes the City to establish procedures for conducting the bidding process and is not intended to restrict the City's rights to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder.

According to the City's procurement guidelines, a responsive bidder is one that has substantially conformed with all material requirements and criteria set forth in the solicitation. A responsible bidder is one having the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having a record of timely and acceptable past performance that will assure good faith performance.

The City's Code of Ordinances, Section 2-266, provides that in determining the lowest and best responsible bidder, the City should consider, in addition to price, factors including the ability, capacity, and skill of the bidder to perform the contract; whether the bidder can perform within the time specified; the character, integrity, reputation, judgment, experience, and efficiency of the bidder; the quality of performance of previous contracts; financial resources; and such other factors as appear pertinent.

Gregori's Bid is Responsive

Masci contends that Gregori's bid is non-responsive because Gregori's professional references on Form 7.8 are not for projects "similar in nature and size" to the Cambridge Pump Station Upgrades. The City disagrees.

Form 7.8 requires bidders to provide three current and correct references from clients for similar services and to certify that the bidder "has successfully done so on recent projects similar in nature and size." The form does not define "similar" with mathematical precision, nor does it require that reference projects be identical in scope, value, or technical specifications to the solicited work. To impose such an exacting standard would stifle the ability for any prospective bidder to ever successfully bid on a project larger or more complex than its last.

Gregori's three references include a complete sanitary sewer lift station replacement valued at \$2,795,000 for the City of Melbourne, a complete lift station replacement valued at \$1,285,000 for Brevard County, and installation of 2,848 linear feet of 48-inch reinforced concrete pipe with junction boxes valued at \$2,061,225 for Seminole County. While these projects are smaller in

total contract value than the Cambridge Pump Station Upgrades, they demonstrate relevant experience in municipal utility infrastructure construction, underground piping systems, pump station work, and coordination with public agencies—all skills directly applicable to the solicited scope of work. The City concedes that Masci also provided references exhibiting relevant experience. Had Masci been the low bidder, the City would have certainly found that Masci was both responsive and responsible.

The Third District Court of Appeal has recognized that in a bid protest context, the City has discretion to determine whether a bidder's qualifications and references satisfy the solicitation's requirements, provided that determination is not arbitrary or capricious. *Miami-Dade Cty. v. Church & Tower*, 715 So. 2d 1084 (Fla. 3d DCA 1998). The City's Purchasing Division and City Engineer reviewed Gregori's references and determined they demonstrated sufficient relevant experience. That determination is supported by the record.

Masci relies heavily on *American Engineering & Development Corp. v. Town of Highland Beach*, 20 So. 3d 1000 (Fla. 4th DCA 2009), in which the court affirmed rejection of the lowest bidder because it did not list projects performed for municipalities or projects on which it was the prime contractor, as the bidding specifications required. Highland Beach is distinguishable. In that case, the lowest bidder failed to provide the specific category of projects the bid specifications mandated—municipal projects where the bidder served as prime contractor. Here, Gregori provided three references for utility infrastructure projects performed for municipal and county clients. Gregori served as the prime contractor on each reference project. The references satisfy the form's requirements, even if Masci's references reflect larger and more complex projects.

A bid is non-responsive only when it fails to conform in all material respects to the solicitation. Minor variations or matters of degree in the qualitative assessment of references do not render a bid non-responsive. Such variations are properly considered as part of the responsibility determination, not as a basis for disqualification on responsiveness grounds. *Intercontinental Props., Inc. v. State Dep't of Health & Rehab. Servs.*, 606 So. 2d 380 (Fla. 3d DCA 1992).

The City finds that Gregori's bid conforms in all material respects to the solicitation and is responsive.

Gregori's Bid is Responsible

Masci further contends that Gregori is not a responsible bidder under Section 2-266 of the Code because Gregori lacks the experience, capacity, and financial resources to perform the Cambridge Pump Station Upgrades project. The City has carefully evaluated Gregori's qualifications under the ten factors enumerated in Section 2-266 and finds that Gregori is a responsible bidder capable of performing this contract.

Ability, Capacity, and Skill. Gregori has demonstrated its ability to perform municipal utility infrastructure projects through its reference projects, which include pump station construction and large-diameter pipe installation. Gregori holds an active Florida General Contractor license and has successfully completed projects for municipalities and counties throughout Florida. While the Cambridge project represents a step up in scale for Gregori, it is not unprecedented for

contractors to successfully perform projects larger than their prior work, particularly when supported by adequate bonding and subcontractor expertise¹.

Financial Resources and Bonding Capacity. Gregori has provided a bonding capacity letter from Great American Insurance Company, an authorized surety, reflecting single-project capacity of \$40 million and aggregate capacity of \$60 million. This bonding capacity is more than adequate to support the approximately \$14 million Cambridge contract. The surety's willingness to bond Gregori for this project constitutes an independent professional assessment of Gregori's financial capacity and ability to perform.

Florida law recognizes that payment and performance bonds provide critical financial assurance that protects the public entity and ensures that subcontractors and suppliers are paid. The City will require Gregori to furnish payment and performance bonds in the full contract amount prior to execution of the contract, as required by Section 255.05, Florida Statutes. These bonds provide the City with a legally enforceable guarantee that the project will be completed and that all subcontractors, suppliers, and laborers will be paid. This financial assurance addresses Masci's concerns about Gregori's capacity to perform and eliminates the risk to the City.

Subcontractor Qualifications. Gregori has identified qualified subcontractors for specialized elements of the work, including Huxted Trenchless for jack-and-bore or microtunneling installation of the 54-inch DIP storm main under the FEC Railway. Huxted Trenchless possesses substantial trenchless construction experience and has successfully completed major railroad crossing projects. They specialize in micro tunneling, jack-and-bore installations, guided auger boring, and horizontal directional drilling. Huxted Trenchless is widely considered in the industry to be a highly experienced trenchless contractor capable of performing a large-diameter railroad jack-and-bore/microtunnel installation. Subcontractor expertise is a routine and accepted means of addressing specialized scope elements in public construction. The fact that Gregori and Huxted Trenchless have not previously worked together does not disqualify Gregori or render Gregori incapable of performance. Many successful construction projects involve first-time teaming arrangements between prime contractors and subcontractors. The surety bonding Gregori's performance has underwritten this risk.

Experience and Quality of Past Performance. Gregori's references reflect satisfactory performance on municipal utility projects. While Masci may have a longer and more extensive track record in large-scale drainage projects, this does not disqualify Gregori or render Gregori non-responsible. Florida law does not require that the City award to the most experienced or most qualified bidder, only that the successful bidder be qualified and responsible. *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446 (Fla. 1st DCA 1978), *Liberty Cty. v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982)

Character, Integrity, and Reputation. Masci does not challenge Gregori's character, integrity, or reputation. The City has no information suggesting any deficiency in these areas.

Other Pertinent Factors. Masci raises concerns about certain pre-bid questions Gregori submitted to City staff regarding railroad construction requirements, insurance, and project

¹ It's worth noting that per their respective bid submittals, neither Masci, nor Gregori, intend to self-perform the most complex portion of the project - jack and bore beneath the railroad tracks.

details. The City does not view these questions as evidence of disqualifying inexperience. To the contrary, a bidder's submission of detailed technical questions demonstrates diligence and a desire to fully understand project requirements before bidding. Bidders routinely submit questions during the solicitation process to clarify scope, specifications, and coordination requirements. The City provided responses through a formal addendum process, and all bidders had access to the same information.

Under the legal framework established by *Liberty County v. Baxter's Asphalt & Concrete*, 421 So. 2d 505 (Fla. 1982), and *Department of Transportation v. Groves-Watkins Constructors*, 530 So. 2d 912 (Fla. 1988), the City has broad discretion to evaluate bidder qualifications and determine responsibility, and that determination is entitled to strong judicial deference when based on an honest exercise of discretion. The City has exercised that discretion here and finds that Gregori is a responsible bidder capable of performing this contract.

City Complied with Procurement Procedures

Masci contends that the City failed to follow its own Procurement Manual by not conducting a substantive review of bidder qualifications and scope compliance. The City disagrees.

The City's Purchasing Division, in coordination with the City Engineer, conducted a thorough responsiveness review of all bid submissions. This review confirmed that each bidder submitted all required forms, certifications, and documentation; that bid bonds were in order; that bidders held appropriate licenses; and that the bids conformed to the material requirements of the solicitation. The bid tabulation sheet reflects this review and documents the results.

The City's evaluation process also included a substantive assessment of bidder qualifications, references, and capacity under Section 2-266. City staff reviewed Gregori's professional references, bonding capacity letter, financial information, and subcontractor list. The City Engineer, a licensed Professional Engineer with extensive experience in municipal infrastructure projects, evaluated the technical aspects of Gregori's submission and concluded that Gregori is qualified to perform the work.

Masci's characterization of the City's review as a "ministerial exercise" that "substituted form for substance" is incorrect. The fact that the bid tabulation sheet uses a checklist format does not mean that the review was superficial or that substantive judgments were not made. The tabulation sheet is an administrative tool for documenting compliance with formal requirements. The substantive evaluation of qualifications and responsibility is reflected in the award recommendation.

Public Records

Masci devotes substantial attention in its written protest to allegations that the City violated the Public Records Act and denied Masci due process by not immediately producing all requested procurement records. Yet, in its presentation at the protest hearing, Masci chose to skip over any discussion regarding public records. Nonetheless, the City responds as follows:

The City received a public records request from you, on behalf of Masci, on June 18, 2026. The request was broad in scope and required coordination among multiple City departments and extensive review to identify any potentially exempt material, as required by law. The City Attorney communicated with you regarding the scope of the request and the time required for a complete response on the same day your request was made exhibiting genuine concern regarding the potential for delay considering the sheer magnitude of the ask. Notwithstanding Masci's persistent refusal to focus its request for the sake of time, the City produced Gregori's bid submittal promptly and subsequently produced additional records, including the bid tabulation sheet and correspondence, all prior to the protest deadline². To date, the only records that have not been provided are those records that the City required a cash deposit to produce and for which Masci has declined to pursue.

Florida law allows a custodian a reasonable time to retrieve records and review them for potential exemptions. What constitutes reasonable time is a fact-specific inquiry determined by the unique circumstances, *magnitude, and scope* of the request, as well as any operational constraints of the responding agency. *Exec. Office of the Gov. v. Fla. Ctr. for Gov't Accountability, Inc.*, 408 So. 3d 839 (Fla. 1st DCA 2025) (emphasis added). Although the protest attempts to summarize the scope of the request as simply providing the purchasing file, a review of the actual substance of the 5-page records request, seeking various records spanning over a 20 year period, clearly demonstrates that the City's approach and response time were more than reasonable under the circumstances.

More fundamentally, Masci has not been denied due process. Masci received the solicitation documents, submitted a bid, received notice of the intended award, filed a timely protest, and has now received a written decision on the merits of that protest. Masci had access to the bid documents that formed the basis for its protest allegations—namely, the solicitation itself, Gregori's bid submission, and Masci's own bid. Due process does not require that a protesting bidder receive every internal memorandum, email, or draft document available before filing a protest. The protest process affords a meaningful opportunity to challenge the award decision, and that opportunity has been provided.

Conclusion

The City has conducted a competitive procurement in accordance with Florida law and the City's procurement process. Gregori Construction, Inc. submitted the lowest responsive and responsible bid. Gregori has provided adequate financial assurance through its surety bonding that the project will be performed in accordance with the contract documents and that all subcontractors, suppliers, and laborers will be paid. The City believes that Gregori is capable of performing this work successfully with the subcontractors it has selected.

² Masci concedes in its protest (see par. 13) that Masci made its own records request, without the assistance of counsel, requesting the Gregori bid submittal. Purchasing staff provided the Gregori bid to Masci on the same day of the request – June 16, 2026 – which happened to also be the same day as the bid opening.

Accordingly, the City denies Masci's protest and affirms its decision to recommend the award of ITB #26-06, Cambridge Pump Station Upgrades, to Gregori Construction, Inc.

Masci may appeal this decision to the City Council in accordance with the City's procurement procedures, or may seek judicial review in the Circuit Court for Volusia County.

The City thanks Masci for its continued interest in working with the City of Port Orange and looks forward to Masci's participation in future procurement opportunities.

Sincerely,



Wayne Clark, City Manager
City of Port Orange

cc: City Attorney



NOTICE OF INTENT TO AWARD

ITB #26-06 Cambridge Pump Station Upgrades

June 16, 2026

On June 5, 2026, Purchasing received five (3) bid submittals for ITB #26-06 Cambridge Pump Station Upgrades.

After review of the responses, City Staff has made a recommendation to award to the following firm:

Gregori Construction, Inc.

This recommendation of award will be presented to City Council for approval on or about June 16, 2026. Interested parties may review the City Council agenda at <https://www.port-orange.org/776/Agendas-and-Minutes>.

Respectfully Submitted,

Anthony McCall

Purchasing Agent

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes or failure to post the bond or other security required by law within the time allowed, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on June 19, 2026 at 5:00 p.m. E.S.T.



CITY OF PORT ORANGE, FLORIDA
ITB TABULATION SHEET

ALL BIDS ACCEPTED BY THE CITY OF PORT ORANGE ARE SUBJECT TO THE CITY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. BIDS FROM THE BIDDERS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BIDS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE. ALL BIDS ARE SUBJECT TO REVIEW BY THE CITY AND AWARD REQUIRES A FORMAL CONTRACT AND APPROVAL BY CITY COUNCIL.

ITB NUMBER: ITB-26-06
ITB TITLE: Cambridge Station Pump Upgrade
OPENING DATE/TIME: June 5, 2026 AT 2:30 P.M.

Submittal Required Forms (mark "yes" or "no")	Response 1			Response 2			Response 3		
	Gregori Construction, Inc.			Masco General Contractor, Inc.			Prime Construction Group, Inc.		
1 Form 7.1 Submittal Checklist			Y			Y			Y
2 Form 7.2 Bidder's Acknowledgment			Y			Y			Y
3 Form 7.3 Addendum and Change Order Procedure Acknowledgment			Y			Y			Y
4 Form 7.4 Drug Free Preference Statement			Y			Y			Y
5 Form 7.5 Public Entity Crimes Statement			Y			Y			Y
6 Form 7.6 Anti-Collusion			Y			Y			Y
7 Form 7.7 Statement of Bidder's Qualifications			Y			Y			Y
8 Form 7.8 Professional References for Previous Experience			Y			Y			Y
9 Form 7.9 Listing of Subcontractors			Y			Y			Y
10 Form 7.10 Scrutinized Companies Certification			Y			Y			Y
11 Form 7.11 Local Business Affidavit			Y			Y			Y
12 Form 7.12 E-Verify Affidavit			Y			Y			Y
13 Form 7.13 Debarment, Suspension, and Other Responsibility Matters			Y			Y			Y
14 Form 7.14 Affidavit of Compliance with F.S. 287.138			Y			Y			Y
15 Form 7.15 No Bid Response			Y			Y			Y
18 Appendix A - 44 C.F.R. Part 18 Certification Regarding Lobbying			Y			Y			Y
19 (Attachment 1) - Schedule of Unit Pricing			Y			Y			Y
20 Current Bonding Capacity Letter (as outlined in Section 6)			Y			Y			Y
21 Copy of all Currently Held Licenses (Contractor, Sunbiz, etc.)			Y			Y			Y
22 Current Tax Receipt of Bidder's Municipality			Y			Y			Y
23 Original Bid Bond or Certified Check or Bank Draft (as outlined in Section 6)			Y			Y			Y
24 Submission of (1) original marked "Original" and 1 Digital (flash drive) version in PDF format			Y			Y			Y
Deemed Responsive?			Y			Y			Y
TOTAL BID			14,396,600.00			14,720,277.00			21,633,964.00

Opened and tabulated by:
Witnessed by:
Approved by:

Anthony McCall, Purchasing Agent
Carina E. Wilson, MBA, FCCM, CPM, Purchasing Manager
Junos Reed, P.E., City Engineer

Anthony McCall 6/17/2026
Carina E. Wilson 6/17/2026
Junos Reed 6/17/2026



Internal Memo Engineering Department

SUBJECT:

Recommend award of ITB 20-16 Ridgewood Ave from Farmbrook Rd to Niver St.
Watermain Improvements Project to 51 Site Services, Inc f

REQUEST:

The Public Works & Utilities Department is requesting the City Council award the construction contract to 51 Site Services, Inc. in the amount of \$543,228.56 plus an additional \$50,000 for unforeseen conditions for a total amount not to exceed \$593,228.56.

PURPOSE:

This project is part of Public Utilities continued effort to maintain/upgrade the water distribution system and ensure quality/quantity of potable water to customers.

CONSIDERATION:

The existing water distribution system located along Ridgewood Avenue from Farmbrook Road to Niver Street is undersized for adequate fire protection and nearing the end of its service life cycle. The flow rate capacities have been reduced due to internal pipe tuberculation and undersized pipe which inhibits the promotion of additional businesses along the Ridgewood corridor.

As part of this project, the water mains will be upsized to accommodate additional customers, hydrants will be added to provide adequate fire flow to meet the latest fire protection standards, and new service lines installed. An upgraded water distribution system along this section of Ridgewood will promote redevelopment of this area. This project will consist of replacing and upsizing approximately 2,800 LF of aging 2" galvanized water distribution mains with 6" PVC pipe, adding fire hydrants, and replacing all existing water services.

The project was bid in accordance with City policy. Five bids were received:

General Underground, Inc.	Chiefland, FL	\$ 543,235.00
51 Site Services, Inc.	Ormond Beach, FL	\$ 544,403.56
Hazen Construction	New Smyrna Beach, FL	\$ 576,120.00
Masci General Contractors, Inc.	Port Orange, FL	\$ 646,461.50
DB Civil Construction, LLC	St. Augustine, FL	\$1,256,710.00

51 Site Services, Inc. requested and received local preference and provide a best and final price of \$543,228.56 making them the apparent low bid. Staff conducted a thorough review of the firms qualifications and recommends award to 51 Site Services, Inc. as the lowest, best responsive bid.

All work is on underground piping, under the sidewalk, and on a state road (Ridgewood). Also in this easement, there are many other utilities occupying the same real estate as Port Orange's utilities. FPL, ATT, Spectrum, and many other utilities also use this area for underground and overhead services. There exists a great possibility of many unforeseen/unanticipated conflicts and conditions in this work area. Therefore, staff is asking for an additional \$50,000 for unforeseen/contingency work that may arise as part of this contract. All additional unforeseen work must be justified and approved in writing by City staff prior to authorization to the contractor. Any unused unforeseen/contingency money would revert back to the Utility Fund Balance.

FUNDING:

This project is part of the Utilities Department Capital Improvement Program for aging infrastructure replacement and approved in the FY21budget.

Fund: 405

Fund Name: Water & Sewer Impact Fee

Cost Center: Water and Sewer System

Program: Water Sewer Distribution

Spend Category: Water - Capital

Current Budget: \$600,000.00

Contract Amount: 593,228.56

RECOMMENDATION:

The Public Utilities Department recommends City Council award the construction contract to 51 Site Services, Inc. in the amount of \$543,228.56 plus an additional \$50,000 for unforeseen conditions for a total amount not to exceed \$593,228.56.

ANTICIPATED SCHEDULE:

- a) February 16, 2021 Council Approval
- b) Notice to Proceed for construction, approximately 60 days after Council Approval
- c) The project will be substantially complete 330 days from the Notice to Proceed date and final completion 365 days from Notice to Proceed.

ATTACHMENTS:

- 1. ITB 20-16 Ridgewood Ave from Farmbrook Rd to Niver St. Watermain Improvements Project Bid Tabulation
- 2. Mead & Hunt Letter of Recommendation of Award
- 3. Notice of Intent to Award
- 4. 51 Site Services, Inc. Bid Submission

Re: Response to Bid Protest Letter

From Fenwick, Robin <rfeenwick@port-orange.org>

Date Wed 8/26/2026 11:39 AM

To Sean Gellis <sean@gellislaw.com>; Jones, Matthew <mjones@port-orange.org>

Cc DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Balmer, Shannon <sbalmer@port-orange.org>

Good morning,

I have confirmed with staff, no such record exists for this project.

Regards,

Robin Fenwick

Assistant City Manager
City of Port Orange

From: Sean Gellis <sean@gellislaw.com>

Sent: Wednesday, August 26, 2026 9:33 AM

To: Fenwick, Robin <rfeenwick@port-orange.org>; Jones, Matthew <mjones@port-orange.org>

Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Balmer, Shannon <sbalmer@port-orange.org>

Subject: [EXT] Re: Response to Bid Protest Letter

Good morning,

One final request. I have scoured the production that was given to me, and I'm human so it's very possible I missed it, but is there anywhere the Engineer of record made a letter of recommendation of award for this procurement?

I note in the document that was mis-produced to us (attached), on the bottom of page 2 it references "Mead & Hunt Letter of Recommendation of Award." Is there a similar "Recommendation of Award" letter for this procurement? Did I miss it?

Sean

Sean Gellis, B.C.S.*

Founder & Managing Attorney



GELLIS LAW
— PLLC —
A CONCIERGE COUNSELOR

Gellis Law, PLLC

2931 Crawfordville Hwy Crawfordville, FL 32327 (main)

Cell: (561) 371-2848

Email: sean@gellislaw.com

For service of court documents, please email service@gellislaw.com

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From: Fenwick, Robin <rffenwick@port-orange.org>
Sent: Tuesday, August 25, 2026 4:35 PM
To: Sean Gellis <sean@gellislaw.com>; Jones, Matthew <mjones@port-orange.org>
Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Balmer, Shannon <sbalmer@port-orange.org>
Subject: Re: Response to Bid Protest Letter

Good afternoon, Mr. Gellis,

I have confirmed with the Clerk's Office that the Notice of Intent to Award is included in the records released to you on or about June 26, 2026. It is listed under the "Release Now" records, showing as the 7th record down in the list. However, I have attached it here for your convenience.

Apologies on the memo that was attached that did not pertain to your request. You can ignore it.

If you need anything further, please do not hesitate to contact us.

Regards,

Robin Fenwick
Assistant City Manager
City of Port Orange

From: Sean Gellis <sean@gellislaw.com>
Sent: Friday, August 21, 2026 9:53 AM
To: Jones, Matthew <mjones@port-orange.org>
Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Fenwick, Robin <rffenwick@port-orange.org>; Balmer, Shannon <sbalmer@port-orange.org>
Subject: [EXT] Re: Response to Bid Protest Letter

Good morning,

We're preparing our appeal, and I wanted to reach out about something. In the PRR dump, I cannot find the memo referenced in the Denial. The Denial states "The substantive evaluation of qualifications and responsibility is reflected in the award recommendation."

The attached memo was produced in the PRR dump, which is for ITB 20-16, not 20-06.

If I missed the justification memo or award recommendation for this procurement, please let me know and point me to it, or produce a copy for me. Thank you!

Sean

Sean Gellis, B.C.S.*

Founder & Managing Attorney



Gellis Law, PLLC

2931 Crawfordville Hwy Crawfordville, FL 32327 (main)

Cell: (561) 371-2848

Email: sean@gellislaw.com

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From: Jones, Matthew <mjones@port-orange.org>

Sent: Tuesday, August 11, 2026 1:20 PM

To: Sean Gellis <sean@gellislaw.com>

Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Fenwick, Robin <rphenwick@port-orange.org>; Balmer, Shannon <sbalmer@port-orange.org>

Subject: RE: Response to Bid Protest Letter

Mr. Gellis,

Good afternoon. Your appeal to City Council is scheduled for the September 1, 2026 meeting of City Council. The deadline for submission of any material you wish to be made part of the agenda is Wednesday, August 26, 2026.

Regards,

Matthew Jones
City Attorney
City of Port Orange
o 386-506-5525
c 386-290-8953

From: Sean Gellis <sean@gellislaw.com>

Sent: Thursday, August 6, 2026 12:43 PM

To: Jones, Matthew <mjones@port-orange.org>

Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Fenwick, Robin <rphenwick@port-orange.org>

Subject: [EXT] Re: Response to Bid Protest Letter

Matthew,

I just had a chance to speak with my client. We are going to appeal to the City Commission. Can you please provide a deadline for the appeal, and some dates/times so we can coordinate which Council meeting we'd need to attend.

Also, my check cleared for the PRR. You guys estimated 7.7 hours, so I'm assuming production is imminent since it has been 2 days. Please provide an update. Thank you!

Sean

Sean Gellis, B.C.S.*

Founder & Managing Attorney



Gellis Law, PLLC

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From: Jones, Matthew <mjones@port-orange.org>

Sent: Thursday, July 30, 2026 10:49 AM

To: Sean Gellis <sean@gellislaw.com>

Cc: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>; Clark, Wayne <wclark@port-orange.org>; Fenwick, Robin <rphenwick@port-orange.org>

Subject: RE: Response to Bid Protest Letter

I believe 10 calendar days would be reasonable. Please let me know as soon as your client makes a decision so we can schedule with City Council accordingly.

Regards,

Matthew Jones

City Attorney
City of Port Orange
o 386-506-5525
c 386-290-8953

From: Sean Gellis <sean@gellislaw.com>
Sent: Thursday, July 30, 2026 10:33 AM
To: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>
Cc: Jones, Matthew <mjones@port-orange.org>
Subject: [EXT] Re: Response to Bid Protest Letter

Sorry about that. Hit the wrong button a little early. There's doesn't seem to be a timeline. In the event we intend to appeal, which I'm confident we will, what's the timeline supposed to be so we aren't deemed to have waived anything? See (c) below.

Sean

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

Sean Gellis, B.C.S.*
Founder & Managing Attorney



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A CONCIERGE COUNSELOR

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telephone and return the original message to us at the above listed address via e-mail. Please permanently remove any copies of this message, including attachments from your system and do not retain a copy, whether in electronic or physical form or otherwise. Thank you.

From: Sean Gellis <sean@gellislaw.com>
Sent: Thursday, July 30, 2026 10:32 AM
To: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>
Cc: Jones, Matthew <mjones@port-orange.org>
Subject: Re: Response to Bid Protest Letter

Received. Thank you.

I just reviewed the protest language in the bid, and there doesn't seem to be a timeline associated with the appeal to the Commission.

Sean Gellis, B.C.S.*
Founder & Managing Attorney



Gellis Law, PLLC
2931 Crawfordville Hwy Crawfordville, FL 32327 (main)
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From: DiPietrantonio, Stephanie <SDipietrantonio@port-orange.org>
Sent: Thursday, July 30, 2026 10:24 AM
To: Sean Gellis <sean@gellislaw.com>
Cc: Jones, Matthew <mjones@port-orange.org>
Subject: Response to Bid Protest Letter

Good afternoon, Mr. Gellis

Please see the attached letter from the City Manager reference the Bid Protests for the Cambridge Pump Station Upgrades Project.

Stephanie DiPietrantonio

Executive Assistant to the City Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
386-506-5502
sdipietrantonio@port-orange.org



CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID ITB #26-06 CAMBRIDGE STATION PUMP UPGRADES



City of Port Orange Purchasing Division
Prepared by: Rita Cooper
Release Date: March 27, 2026

**Bid Due Date & Time:
May 1, 2026 @ 2:30 PM**

City of Port Orange, Florida
1000 City Center Circle, Port Orange, FL 32129
(386) 506-5740
purchdiv@port-orange.org; www.port-orange.org



Legal Notice to Bidders

ITB #26-06 CAMBRIDGE STATION PUMP UPGRADES

Notice is hereby given that the City of Port Orange is soliciting bids for ITB# 26-06 Cambridge Station Pump Upgrades. Bids will be accepted in the City Clerk's office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on MAY 1, 2026** which may be amended by addendum issued by the City. All untimely bids will not be considered and will be returned to the Bidder unopened. All bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. **Bids will be opened and read aloud at 2:30 PM EST in Council Chambers.**

There will be a **Mandatory Pre-Bid Conference and site visit** for the project at **2:00 PM EST** on **APRIL 6, 2026** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All prospective Bidders must attend the meeting and **site visit**. **Only Bidders attending the mandatory Pre-Bid Conference and site visit will be eligible to submit a Bid.** All attendees to the Pre-Bid Conference **and site visit** must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and **MUST** sign in accordingly. Bidders are urged to obtain bid documents and familiarize themselves with the documents prior to the pre-bid conference.

DESCRIPTION: CONSTRUCTION OF A NEW DISCHARGE STRUCTURE, PIPING AND BERM.

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

Bidder must include with their submittal a bid guarantee in the form of a bid bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid. If awarded, the Bidder must also be able to obtain both payment and performance bonds equal to one hundred percent (100%) of the project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's failure to include the bonding capacity letter with bid package may result in rejection of Bidder's submittal.

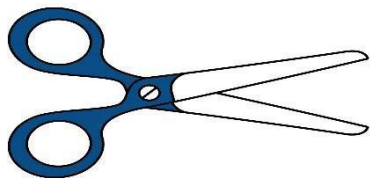
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with Chapter 2, Article VI, Division 2, Section 2-266. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 and at www.municode.com.

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

All questions shall be directed **in writing** to RITA COOPER, BUYER, RCOOPER@PORT-ORANGE.ORG and purchdiv@port-orange.org and reference "Questions on ITB #26-06 CAMBRIDGE PUMP STATION UPGRADES" in the subject line. Last day for questions will be APRIL 17, 2026 by 5:00 PM EST.

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

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



SEALED BID - DO NOT OPEN	
SEALED BID NO.:	ITB #26-06
BID TITLE:	CAMBRIDGE STATION PUMP UPGRADE
DUE DATE/TIME:	MAY 1, 2026 AT 2:30 PM EST
SUBMITTED BY:	_____ (Name of Company)
BIDDER'S ADDRESS:	_____ _____
DELIVER TO:	CITY OF PORT ORANGE CITY CLERK'S OFFICE ATTN: RITA COOPER, BUYER PURCHASING DIVISION 1000 CITY CENTER CIRCLE PORT ORANGE, FL 32129
DATE/TIME RECEIVED:	_____ (To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Bidders) for **construction of a new discharge structure, piping and berm** for the Cambridge pump station.

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

SECTION 2 – INSTRUCTIONS TO BIDDERS

Bidders desiring to provide services, as described herein shall submit sealed bids, including one (1) original and one (1) digital (flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Eastern Standard Time)

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of distribution	MARCH 27, 2026
Mandatory Pre-bid Conference & Site Visit	APRIL 6, 2026 @2PM
Deadline for questions	APRIL 17, 2026 By 5PM
Addendum posting (if needed)	APRIL 24, 2026
Bids due	MAY 1, 2026, By 230PM
City Council meeting for approval of Recommendation of Award	To Be Determined

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

City of Port Orange City Clerk's Office
Attn: RITA COOPER, BUYER
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Sealed bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time. Bids shall be sealed and Bidders shall clearly indicate on the outside of their bid the following:

- Invitation to Bid (ITB) Number and Title
- Date of Opening
- Name of Bidder
- Address of Bidder

Due to the timing of mail service, the City cautions Bidders to ensure actual delivery of bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Bidders are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. The City will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone, email or fax will not be accepted.

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

PRE-BID CONFERENCE

There will be a **Mandatory pre-bid conference and site visit** on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All prospective Bidders must attend the meeting and **site visit**. **Only Bidders attending the mandatory pre-bid conference and site visit will be eligible to submit a bid.** All attendees to the **Mandatory pre-bid conference and site visit** MUST sign in. The representative of each Bidder shall be an authorized employee of the Bidder and must sign in accordingly. **The site visit will immediately follow the meeting in Council Chambers.**

QUESTIONS

All questions shall reference "ITB #26-06 CAMBRIDGE PUMP STATION UPGRADES" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Rita Cooper, Buyer
1000 City Center Circle
Port Orange, FL 32129
Rcooper@port-orange.org
purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the bid due date. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. The Bidder should verify prior to submitting a bid that all addenda have been received and reviewed. All addenda will be published on the City Purchasing web page at www.port-orange.org/bids.aspx and the DemandStar website at www.demandstar.com.

The City of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Bidder or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Bidder or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS

It is the Bidder's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS

Bidders shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active".

Bidders must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this ITB on the provided *Professional References* form (Form 7.8). Failure to provide verifiable references may cause the Bidder to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING

All Bidders are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all Bidders and their

subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted bids for this project. Any Bidder contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

SCHEDULE OF UNIT PRICING

Schedule of Unit Pricing is to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the Schedule of Unit Pricing as directed and without modification will negatively affect the evaluation of your bid. If the City has a need to revise the Schedule of Unit Pricing prior to the bid submittal deadline, it will do so in a published addendum. If the City does revise the Schedule of Unit Pricing, bidders **must** complete and return the City issued revised version of the Schedule of Unit Pricing. If bidder does NOT complete and return the City issued revised version of the Schedule of Unit Pricing their bid submittal will be deemed non-responsive.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the ITB specifications, the Bidder must indicate those exceptions as stated on the *Bidder's Acknowledgement* (Form 7.2).

BID SUBMISSION AND WITHDRAWAL

Unless otherwise specified, Bidder shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Bidders. Upon opening, bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS

Correction of inadvertently erroneous bids shall be permitted up to the time of ITB opening. Bidders shall not be allowed to modify their bids after the opening time and date.

WITHDRAWAL OF BIDS

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

OPENING OF BIDS

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. The City bears no responsibility for the premature opening of a bid not properly addressed and identified.

LITIGATION HISTORY

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

DEBARMENT HISTORY

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

as required on the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS

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

BIDS MAY BE REJECTED AND/OR BIDDER(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

OWNERSHIP OF DOCUMENTS

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

REQUIRED DOCUMENTS FOR AWARDED BIDDER

The awarded Bidder shall return all the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract.

SECTION 3 – SCOPE OF WORK

SCOPE OF WORK:

This project consists of the installation of approximately 475 feet of 54-inch DIP storm main by jack and bore under the FEC Railway running North to South. Additionally, 455 feet of 72-inch PCCP storm main will be installed by open cut connecting the proposed pump station to the outfall location east of the FEC railway. Sod replacement, driveway, roadway and right-of-way repair, including concrete, asphalt, dirt, and gravel replacement in kind will be required at all disturbed areas.

Please refer to Attachment No. 2 Scope of Work & Specifications and Attachment No. 3 Drawings & Repair Plans published on the City's webpage @ <https://www.port-orange.org/bids.aspx> and DemandStar via their website @ www.demandstar.com.

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerers who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Bidders/Proposers in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective Bidders requesting pricing for a specified Good or Service which has been advertised for bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective proposers requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.

25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the “driver of change” and seeks alternatives/options.
27. **Lowest Responsible Bid** means the responsive bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting lowest responsible bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employer practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City’s standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder’s authority to deliver and invoice the City for Goods or Services specified, and the City’s commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective proposers requesting qualifications of the proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective proposers requesting statements of qualifications pursuant to Florida Statute 287.055 “Consultant’s Competitive Negotiation Act” which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. “prospective respondents”) submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.

45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Bidder)** is a Bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Bidder)** is a Bidder that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Bidder must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective Bidders/Proposers to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a supplier, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder/Proposer's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

SECTION 5 – GENERAL TERMS AND CONDITIONS

These terms and conditions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. These General Terms and Conditions apply to all advertised Solicitations; however, said terms and conditions may be superseded, in whole or in part, by Section 6, Special Requirements/Instructions.

1. **ACCEPTANCE BY CITY**
The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by the Bidder. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this solicitation shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.
2. **ADDENDA**
When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders must acknowledge all addenda by completing Form 7.3 *Addendum and Change Order Procedure Acknowledgement* and include it in the returned response

package. Failure to acknowledge the correct number of addenda issued may result in rejection of the response. It is the responsibility of the Bidder to ensure all addenda have been received and reviewed prior to submitting a bid. All addenda shall be posted by the City on DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at <https://www.port-orange.org/bids.aspx>. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the solicitation response due date. Bidders should not rely on any representations, statements or explanations other than those made in this solicitation or in any addendum to the solicitation. Where there appears to be a conflict between the solicitation and any addenda issued, the last addendum issued shall prevail.

3. **ADDITIONAL GOODS**

Products, materials and goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

By submitting a response to a formal solicitation, the Bidder affirms that this response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a response for the same materials, supplies, or equipment, and that the response is in all respects fair, and without collusion or fraud. Additionally, Bidder agrees to abide by all conditions of this solicitation and certifies that he/she is authorized to sign the response for the bidding company/firm. In submitting a response to the City of Port Orange, the Bidder offers and agrees that if the response is accepted, the Bidder shall convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Bidder.

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the contract, the Bidder agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

The successful Bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release the Bidder from all contractual obligations.

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA**

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

8. **AWARDS**

Recommendation for award will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Manual. The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Bidders; to reject any and all bids, or to waive any informality or technicality in bids received as deemed to be in the best interest of the City. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, bid or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT**

When a bid received has been determined to be satisfactory, a contract will be awarded, or Purchase Order issued to the lowest responsive and responsible Bidder within the time designated in the contract documents. The Bidder(s) to whom the award is made shall execute the contract(s) and return it, together with the properly executed bonds and insurance certificates to the City within the time specified.

10. **BID RETURNS**

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

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, statements, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

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

12. **BID TABULATION**

Bidders who wish to receive a copy of the bid tabulation may obtain it via DemandStar at www.demandstar.com or on the City Purchasing web page at www.port-orange.org/bids.aspx.

13. **BIDDER'S PRODUCT OR SERVICES**

The Bidder's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the Bidder warrants that it has a clear title to the product being delivered.

- a. If the Bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder.
- c. In furnishing the service or product to the City, the Bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, proposal or quote.

14. **BONDS**

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

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

15. **CERTIFICATE OF INSURANCE**

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

16. **CHANGE ORDERS**

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

17. **CHANGE ORDER REQUEST NOTIFICATION**

The awarded Bidder is responsible for giving the City of Port Orange, prior to the contract expiration date, at least forty-five (45) calendar days of advance notice for any anticipated changes in price greater than \$25,000, and any changes in time and/or scope of the awarded contract. The Bidder shall not continue to provide services past the contract expiration date unless approved by a written Change Order Notice from the City.

18. **CLEAN UP**

Upon completion of the delivery of materials, the Bidder shall restore any/all public and private property which may have been damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Bidder shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged. If

sod is used it shall match the sod present on the effected property. Bidder shall make all repairs and restorations at his/her expense.

19. **CONDUCT OF BIDDERS**

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

20. **CONE OF SILENCE**

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

Exceptions to the Cone of Silence:

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

21. **CONFLICT OF INTEREST**

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

22. **CONFLICT OF INSTRUCTIONS**

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

23. **CONTRACT OBLIGATION**

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

24. **CONTRACT RENEWALS**

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

25. **COPYRIGHT AND PATENT RIGHTS**
Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this response, and successful Bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.
26. **COST INCURRED BY BIDDER**
All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Bidder. No payment shall be made for any response received, nor for any other effort required of or made by the Bidder prior to commencement of work as defined by the contract approved by the City Council.
27. **DAMAGE**
Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the City's representative and the Bidder. If the Bidder is found to be at fault, all repairs, restitution, or reimbursements to the City must be completed within one week of discovery.
28. **DEBARMENT HISTORY**
The City will consider a Bidder's debarment history information in its review and determination of responsibility. All Bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Bidder, any parent or subsidiary of the Bidder, or any predecessor organization. If the Bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Bidder's debarment history is an issue of responsibility, the failure to provide debarment history as required on the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.
29. **DEFAULT PROVISIONS**
In the event of default by the Bidder, the City reserves the right to procure the item(s) bid from other sources and hold the Bidder responsible for excess costs incurred as a result. If a Bidder defaults on a City contract, the City Council may elect to refrain from doing business with the Bidder for a period of 36 months from the date of default.
30. **DELIVERY OF GOODS/SERVICES**
All materials are to be delivered F.O.B.; City of Port Orange designated facility. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The Bidder shall clearly state in the response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the Bidder in default. Upon approval of a contract, the Bidder is obligated to deliver the goods to the destination specified in the solicitation or the purchase order and bears the risk of loss until delivery. If this solicitation or purchase order does not contain delivery instructions, Bidder shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this competitive solicitation shall prevail. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the Bidder, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the Bidder to meet the contract delivery dates will be cause for removal of the Bidder from the City's list of eligible Bidders/Proposers as determined by the Purchasing Division.
31. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER**
In determining the lowest and best responsible Bidder, in addition to price, there will be considered the following:
a. The ability, capacity and skill of the Bidder to perform the contract.

- b. Whether the Bidder can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

32. **DISCLOSURE OF CONFLICTS**

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

33. **DISQUALIFICATION OF BIDDER**

The Purchasing Manager shall maintain a current listing of qualified Bidders. The Purchasing Manager may, from time to time, remove any Bidder's name from the list of qualified Bidders. Normally the removal of a Bidder from the Bidder list is done after non-response from that Bidder for three (3) consecutive solicitations. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all responses may be rejected if the City believes that collusion exists among the Bidders. Responses in which the prices are obviously unbalanced may be rejected. If multiple responses are submitted by a Bidder and after the responses are opened one of the responses is withdrawn, the result will be that all of the responses submitted by that Bidder will be withdrawn; however, nothing herein prohibits a Bidder from submitting multiple responses for different products or services.

34. **EVALUATION**

Evaluation shall be used as a determinant as to which response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all solicitation requirements, delivery and needs of the using department are considerations in evaluating responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any Bidder/Proposer, at any time, to clarify, verify or request information with regard to any response.

35. **EXCEPTIONS TO SPECIFICATIONS**

For purposes of evaluation, the Bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Bidder that are required to be signed by the City. If exceptions are not stated by the Bidder, in his/her bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder on Form 7.2 *Bidder's Acknowledgement* included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

36. **E-VERIFY**
Bidders shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Bidder during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Bidders shall complete **Form 7.12 E-Verify Affidavit** and include it in the returned bid package, along with proof (profile page) of registration in the E-Verify system. Failure to include the affidavit may result in rejection of the bid.
37. **FACILITIES**
The City reserves the right to inspect the Bidder's facilities at any time.
38. **FAILURE TO RESPOND**
If the Bidder elects not to bid, the City requests that Bidder return the enclosed **Form 7.15 No Bid Response** by the bid due date and state the reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting **Form 7.15 No Bid Response**, three (3) times, shall result in the Bidder's name being removed from the City's mailing list.
39. **FINANCIAL STABILITY**
Bidders shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement **and** the latest Dunn & Bradstreet report will be accepted in lieu thereof.
40. **FORCE MAJEURE**
Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of force majeure. Force majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.
41. **FOREIGN COUNTRIES OF CONCERN**
A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.
42. **GOVERNING FORMS**
In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.
43. **GOVERNING LAW**
Bidders shall comply with all applicable federal, state and local laws and regulations. All responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than \$35,000.00 must have a signed, notarized *Sworn Statement of Public Entity Crimes* (Form 7.5) contained herein to comply with Section 287.133(3)(a), Florida Statutes. Also required is the *Drug- Free Preference Statement* (Form 7.4) also contained herein to comply with Section 287.087, Florida Statutes.

44. **GRANT FUNDING**

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the Bidder understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

45. **HIPAA COMPLIANCE**

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

46. **HUMAN TRAFFICKING**

When a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in this section. For purposes of this subsection, the term "governmental entity" has the same meaning as in s. [287.138\(1\)](#).

47. **IDENTICAL TIE BIDS**

If there are tie bids, meaning everything except the information relating to the submitting firm is the same, the following methods shall be used in the order below to break the tie:

- The Bidder that has a Business Tax Receipt (BTR) within Port Orange City limits (confirmed through Sunbiz).
- The commodity was manufactured in the State of Florida.
- Florida business as confirmed thru SunBiz.org.
- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie Bidder who has or had a contract with the City and performance is or was not satisfactory, the other tied Bidder is awarded.
- Drug free workplace policy in place.

48. **INDEMNIFICATION/HOLD HARMLESS**

- (a) Bidder shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Bidder, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the contract by the Bidder, his/its agents, servants and employees. Bidder shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.
- (b) To the fullest extent permitted by law, in addition to the express duty to indemnify the City when there is any causal connection between Bidder's work and any injury, loss, damage, death or property damage, Bidder expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Bidder hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Bidder as long as the claims made could be causally connected to Bidder as reasonable determined by the City.

49. **INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Bidder as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Bidder under this contract and that the successful Bidder has no authority to bind the City. The Bidder represents itself to be an independent contractor offering such

services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Bidder shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Bidder shall further understand that the City cannot save and hold harmless and or indemnify the Bidder and/or the Bidder's employees against any liability incurred or arising as a result of any activity of the Bidder or any activity of the Bidder's employees performed in connection with the contract.

50. **INSPECTIONS AND TESTING**

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

51. **INSURANCE CANCELLATION**

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

52. **INSURANCE REQUIREMENTS**

Bidder shall maintain insurance, as required herein, during the life of this contract. Bidder shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Bidder shall be primary and non-contributory. All insurance coverages of the Bidder shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Bidder may use leased employees if the Bidder ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Bidder using a leased employee shall complete the City's *Leased Employee Affidavit* contained herein. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Bidder shall not commence work under this contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, non-renewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days of prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages. Bidder shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Bidder is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Bidder to ensure the subcontractors maintain the required coverage, shall not relieve the Bidder of any contractual responsibility, obligation or liability. The City reserves the right to increase the insurance coverage requirement as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this. Should at any time the Bidder or subcontractors not maintain the insurance coverages required herein, the City may terminate the contract or at its sole discretion shall be authorized to purchase such coverages and charge the Bidder for such

coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the contract.

[Remainder of this page left intentionally blank]

Standard Insurance Requirements									
Required	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 Exhibit Form.	<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></table> Contracts over \$20 million to be determined by the City	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	- 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								
☒	Comprehensive General Liability (including completed operations and contractual liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage: \$1,000,000 each occurrence \$1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.						
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	<u>Limits:</u> Auto Liability Bodily 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 required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.						
☐	Installation Floater (IT)	<u>Limits:</u> Coverage – To Be Determined							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Professional Liability/Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage – To Be Determined							
☐	Payment and Performance Bond required	<u>Limits:</u> Coverage – equal to amount of contract							
	City Manager waives Payment and Performance Bond for work under \$200,000 unless otherwise required by Department Director.								
	Unless otherwise required by law, City Manager waives insurance for FOB goods only purchases.								

53. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. The awarded firm is encouraged to accept payment via ACH. This can be accommodated after the contract is fully executed.

54. **IRREVOCABILITY OF RESPONSES**

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

55. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

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

56. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

57. **LICENSES, PERMITS AND TAXES**

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

58. **LITERATURE (if applicable):**

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

59. **LOCAL PREFERENCE**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

60. **MAINTENANCE**

If maintenance is required for equipment purchased as a result of this solicitation, it is preferred that such maintenance be available to the City of Port Orange by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Schedule of Unit Pricing form for the solicitation. If the City of Port Orange opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and shall be priced accordingly.

61. **NAME BRANDS**
Specifications may reference name brands and model numbers. It is not the intent of the City of Port Orange to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with the Bidder, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.
62. **NON-DISCRIMINATION**
There shall be no discrimination as to race, color, religion, gender, age, marital status, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for or purchase of goods or services, or the subcontracting of work in performance of this contract.
63. **NON-EXCLUSIVITY OF CONTRACT**
The selected Bidder understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.
64. **NON-PERFORMANCE**
Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.
65. **NOTICE TO CONTRACTOR**
The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.
66. **OPTIONAL CONTRACT USAGE**
As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.
67. **OTHER AGENCIES**
(a) All Bidders awarded contracts from this bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
(b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Bidder(s).
68. **PATENTS/COPYRIGHTS**
The successful Bidder agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.
69. **PRE-BID CONFERENCE**
The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the solicitation legal advertisement and solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Only Bidders attending a mandatory pre-bid conference will be eligible to submit a response. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly.
70. **PREPARATION OF RESPONSES**
In preparing responses, the Schedule of Unit Pricing form, the Bid Bond form (when a Bid Bond is required as bid security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti- Collusion Statement, and Drug Free Preference Statement must be properly executed in ink. The prescribed Schedule of Unit Prices shall be typewritten or written in ink, or electronically imputed in the blank spaces

for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the total bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the solicitation. The Bidder shall sign his/her name and give his/her business address in the spaces provided therefore. If the submittal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

71. **POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES**

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

72. **PRICING**

Responses may not be withdrawn before the expiration of one-hundred-twenty (120) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after one-hundred-twenty (120) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Schedule of Unit Pricing form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting bids/proposals based on a lump sum basis, Bidders shall be required to submit a price for each line item listed on the Schedule of Unit Pricing in order to be considered for award.

73. **PRODUCTS/ESTIMATES**

Items included on the bid form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and estimated quantities provided on the Schedule of Unit Pricing are for bidding purposes only and are not guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

74. **PROPRIETARY INFORMATION**

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

75. **PROTECTION**

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

76. **PUBLIC ENTITY CRIMES**

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor

or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted Bidder list.

77. **PUBLIC RECORDS COMPLIANCE**

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

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

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

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

78. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Bidders will not be able to procure a copy of their competitors' bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Bidder, or where a Bidder answers questions. In other words, neither Bidders, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Bidders, but the new law limits public attendance to portions of such meetings.

79. **PURCHASE ORDER AND DELIVERY**

The successful Bidder shall not deliver products or provide services without a City of Port Orange purchase order, signed by an authorized agent of the City of Port Orange. The fastest, most reasonable delivery time shall be indicated by the Bidder. Any special information concerning delivery should also be

included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City of Port Orange without prejudice to other remedies provided by law. Where delivery times are critical, the City of Port Orange reserves the right to award accordingly.

80. **QUALITY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

81. **QUESTIONS/INTERPRETATIONS**

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

82. **RECORDS/AUDIT**

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

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

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

83. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

84. **REJECTING OF RESPONSES/RE-BIDDING**

The City reserves the right to accept or reject any or all responses or parts of responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all responses. If the lowest and best response exceeds the budgeted amount and the City Council does not make additional funds available, the Purchasing Division with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

85. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final solicitation selection, Bidders may be required to submit additional information which the City may deem necessary to further evaluate the Bidder's qualifications to perform under the terms of the solicitation and subsequent contract.

86. **REVIEW OF RESPONSES/SUBMISSIONS**

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

87. **RIGHT OF WITHDRAWAL**

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

88. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

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

89. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The Bidder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

90. **SAMPLES**

Samples, when requested, must be furnished at, or before the bid opening (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Bidder's request, be returned within thirty (30) days after bid award at the Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

91. **SCRUTINIZED COMPANIES LIST**

The contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this contract for cause if the contractor is found to have submitted a false certification or if the contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The contractor shall provide a completed *Scrutinized Companies Certification* (**Form 7.10**), certifying the contractor's compliance with this section, prior to the execution of this contract.

92. **SEPARATION AND DISTRIBUTION**

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

93. **SEVERABILITY**

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

94. **SIGNATURE REQUIRED**

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

95. **SIGNED RESPONSE CONSIDERED AN OFFER**

The signed response is considered an offer on the part of the Bidder, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the

event of default on the part of the Bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

96. **SILENCE OF SPECIFICATIONS**

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

97. **SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS**

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

98. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Bidders shall use the solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder in ink. Responses shall be submitted by mail or hand delivery only. No response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City Clerk, City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 PM (Eastern Standard Time) on the date indicated in the solicitation documents or an addendum issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the Bidder and will not be opened. Bids (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/ package shall be clearly marked on the outside to include the bid project name, bid number, name and address of the Bidder.

99. **STATE LICENSING REQUIREMENTS**

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

100. **SUBCONTRACTING**

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

101. **SUPPLEMENTAL MATERIALS**

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included.

Materials such as legal documents and contractual agreements that the Bidder wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

102. **TAXES**

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

103. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time-period, the term will be given in the bid specifications.

104. **TERMINATION**

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

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

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

105. **TITLE TRANSFER**

Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The contractor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the purchase order as a "Deliver To:" address.

106. **UNBALANCED BID**

A mathematically unbalanced bid is when a Bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced bids will be rejected if the prices are deemed materially unbalanced.

107. **USE OF SOLICITATION FORMS**

The Bidder shall complete the appropriate solicitation form(s) included in the solicitation. All blanks on the solicitation forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the solicitation forms. Failure to fully complete the appropriate solicitation forms may result in disqualification of the response. If additional space for a response is required, attach an additional page to the page on which the question is

stated. Clearly identify the number of the question to which the response is attached. Further, if additional solicitation form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or entity must be that of an officer, partner or a sole proprietor of the entity making the response. The original response, and each copy submitted shall contain an original signature on the *Bidder's Acknowledgement Form* contained in each solicitation.

108. **VARIANCES**

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

109. **WAIVER OF IRREGULARITIES**

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

110. **WARRANTIES**

Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the response. Bidders may not limit or exclude any implied warranties. The Bidder warrants that products sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of Port Orange may return the product for correction or replacement at the Bidder's expense. If the Bidder fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder's expense.

SECTION 6 – SPECIAL REQUIREMENTS/INSTRUCTIONS

PERIOD OF OFFER VALIDITY:

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

AWARD RECOMMENDATION:

It is the intent of the City to award a contract to the lowest responsive and responsible Bidder as outlined in Section 3 and (Attachment 1) Schedule of Unit Pricing.

CONTRACT TERM:

Three hundred ninety-five (395) days from receipt of Notice to Proceed from the City for substantial completion.

ELIGIBILITY OF BIDDER:

To be eligible to respond to this ITB, the Bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal by completing Form 7.7 Statement of Bidder's Qualifications in its entirety.

FUNDING

Funding for this project includes FEMA reimbursement. The Bidder will comply with all applicable federal laws, regulations, and Executive Orders, including FEMA policies, procedures, and directives. The awarded Bidder shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Awarded Bidder shall ensure that all subcontracts comply with all applicable federal laws, regulations, and Executive Orders, including FEMA policies, procedures, and directives.

PROOF OF E-VERIFY REGISTRATION

Bidders who do not include proof of E-Verify registration with Form 7.12 City of Port Orange Contractor E-Verify Affidavit may be deemed non-responsive. Bidder must include printed pages from the E-Verify website showing company name and E-Verify registration number (My Company Profile). Bidder's failure to include Form 7.12 and proof of registration with their bid submittal may result in rejection of Bidder's submittal.

LICENSES AND PERMITS

Contractor is responsible for all applicable local and state licenses, permits and fees.

PAYMENT & PERFORMANCE BONDS

If awarded, the Bidder must be able to obtain payment and performance bonds from a surety company licensed in Florida and must submit proof of their present bonding capacity with their bid submittal package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's bonding capacity must be equal to or greater than 100% of the total amount bid. Bidders who do not include their present bonding capacity letter in their submittal package may be deemed non-responsive.

Upon award, the successful Bidder will be required to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of the contract amount to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the awarded Bidder the recording information for the bond to evidence that the Bidder has met the requirement of Florida law. The City will bill the cost of recording to the awarded Bidder.

BID BONDS:

The Bidder must submit with their bid package a certified check or bank draft, payable to the City of Port Orange, FL or a satisfactory bid bond executed by the Bidder and an acceptable surety in the amount equal to (5%) of the total amount of the bid. If submitting a bid bond in lieu of a certified check or bank draft, the original bid bond must be included with bid submittal. If submitting a bid bond in lieu of a certified check or bank draft, Bidders who do not include their original bid bond with their submittal may be deemed non-responsive.

NOTICE:

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

SAFETY:

The awarded Bidder will comply with all applicable OSHA, State of Florida Safety Regulations and comply with all construction safety requirements of local authorities having jurisdiction. The awarded Bidder shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

REPAIR OF DAMAGES:

It is the responsibility of the awarded Bidder to repair any damages incurred in the area that are directly related to the project. When damages occur, the City of Port Orange Representative is to be notified and shall inspect the repairs upon completion.

Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

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

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

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

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

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

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

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

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

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

Secretary of Labor, or as otherwise provided by law.

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

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

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

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

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

(d) **Davis-Bacon Act:** If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

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

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

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

(1) Minimum wages.

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

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

(ii)

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division,

U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(2) Withholding.

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions

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

(ii)

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

(ii) Trainees.

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

work:

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

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

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

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

liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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

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

- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

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

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

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

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

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

Clean Air Act

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

Federal Water Pollution Control Act

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

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

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

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

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*.

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

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

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

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

(2) *Prohibitions.*

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

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

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- (i) This clause does not prohibit Contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (ii) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a substantial or essential component of any system; and
 - 2. Are *not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- (i) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.
- (ii) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:
 - a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

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

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

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

(n) Access to Records and Reports:

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

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

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

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

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

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

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

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein,

shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug-Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Not all FEMA financial assistance programs are subject to BABAA. Most disaster financial assistance programs are not subject to BABAA requirements, including the Public Assistance (PA), Hazard Mitigation Grant Program (HMGP), Individual Assistance (IA), and Fire Mitigation Assistance Grant (FMAG) programs.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

Required Certification: If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ___ Form 7.2 – Bidder’s Acknowledgement
- ___ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ___ Form 7.4 – Drug Free Preference Statement
- ___ Form 7.5 – Public Entity Crimes Statement
- ___ Form 7.6 – Anti-Collusion
- ___ Form 7.7 – Statement of Bidder’s Qualifications
- ___ Form 7.8 – Professional References for Previous Experience
- ___ Form 7.9 – List of Subcontractors
- ___ Form 7.10 – Scrutinized Companies Certification
- ___ Form 7.11 – Local Business Affidavit of Eligibility
- ___ Form 7.12 – E-Verify Affidavit & Proof of Registration
- ___ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ___ Form 7.14 – Affidavit of Compliance With F.S. 287.138
- ___ Form 7.15 – No Submittal Response
- ___ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
- ___ (Attachment 1) – Schedule of Unit Pricing
- ___ **Current Bonding Capacity Letter (as outlined in Section 6)**
- ___ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ___ Current Tax Receipt of Bidder’s municipality
- ___ **Original Bid Bond** or certified check or bank draft (as outlined in Section 6)
- ___ Submission of one (1) original marked “ORIGINAL” and one (1) digital (flash drive) version in PDF format

BY: _____

Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the Bidder/Contractor as its act and deed and that the Bidder/Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this bid is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a bid for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Bidder interested in said ITB; and that the undersigned executed this Bidder's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for the contract under which services will be performed, does hereby propose to furnish all labor, equipment and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☐ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

Name of Business

Mailing Address

Authorized Signature

City, State & Zip Code

Printed Name and Title

Telephone Number

Federal Identification No.

E-mail Address

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

I acknowledge receipt and incorporation of the following addenda and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum# _____ Date: _____ Addendum# _____ Date: _____

Addendum# _____ Date: _____ Addendum# _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

(To be signed in the presence of a notary public or other authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____ (name of Offeror or business) is _____.
2. My relationship to _____ (name of Offeror or business) is _____ (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____. A copy of the order of the Division Administrative Hearing is attached. **(Draw a line through paragraph 7 if paragraph 6 above applies)**

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION

By signing this form, the Bidder agrees that this bid is made without any other understanding, agreement or connection with any person, corporation or firm submitting a bid for the same purpose and that the bid is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISION, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE BIDDERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: _____

SIGNED BY: _____
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER’S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: _____
- B. Permanent main office address: _____
- C. Date organized: _____
- D. If a corporation, where incorporated: _____
- E. How many years have you been engaged in the business under your present firm or trade name? _____
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: _____
- H. Have you ever failed to complete any work awarded to you? If so, where and why? _____
- I. Have you ever defaulted on a contract? If so, where and why? _____
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ _____
- M. Give bank name, contact name and phone number: _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐Yes☐No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising the Statement of Bidder’s Qualifications.

	_____ Name of Business
STATE OF: _____	_____ Authorized Signature
COUNTY OF: _____	_____ Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2026, by _____ and who:

☐Is personally known to me; or ☐has produced _____ as identification.

Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange.)**

1. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
2. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
3. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf

(Print Name and Title)

of _____ ("Company"), certify that _____

(Company Name)

(Company Name)

does not: 1. Participate in a boycott of Israel; and

2. Is not on the Scrutinized Companies with Boycott Israel List; and

3. Is not on the Scrutinized Companies with Activities in Sudan List; and

4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and

5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

COMPANY NAME

SIGNATURE

PRINT NAME

TITLE

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): _____

Business Name: _____ Contact Person/Title: _____

Mailing Address: _____ City, State, Zip: _____

Phone Number: _____ Email address: _____

Physical Presence of Business: ☐ Headquarters ☐ Principal Place of Business

Within Legal Boundaries: ☐ City of Port Orange ☐ Volusia County ☐ State of Florida

FEIN (Federal Employer Identification Number): _____

Business Structure: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

As an authorized representative of the Firm, I certify that this Firm complies fully with the above requirements.

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

I, the undersigned hereby certify that _____ (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of _____ (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Print or Type Name, Title

Signature of Affiant

Federal Employer ID Number (FEIN)

E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

**FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

**Primary Covered Transactions
(To be completed by Prime Contractor)**

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Bid Number or Project Name

Name and Title of Authorized Representative

Signature

Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH
FOREIGN ENTITIES OF CONCERN**

The undersigned (“Affiant”), on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury as follows:

1. Affiant is the _____ of _____
(Title) (Business Name)
which does business in the State of Florida, hereinafter called the “Entity”.
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1) (c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20____ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large:
Printed Name/Seal of Notary, Commission and Expiration Date:

(seal)

My commission expires: _____

This document must be completed and returned with your Submittal

FORM 7.15 – NO BID RESPONSE

If your company will not be submitting a bid in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #26-06 CAMBRIDGE PUMP STATION UPGRADES

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a “no response”.

- ☐ Specifications “too tight” or geared toward on brand or manufacturer (please explain below)
- ☐ Insufficient time to respond
- ☐ Specifications unclear (please explain below)
- ☐ We do not offer this product/service or an equivalent
- ☐ Our product schedule does not permit us to perform within stated timeline for the project
- ☐ Unable to meet specifications
- ☐ Unable to meet bond requirements
- ☐ Unable to hold prices firm throughout the term of the contract period
- ☐ Unable to meet insurance requirements
- ☐ Other: _____

Print Name: _____

Signature: _____ Date: _____

Additional Information:

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name & Title of Contractor's Authorized Official

Date: _____

This document must be completed and returned with your Submittal



ATTACHMENT 1 SCHEDULE OF UNIT PRICING

ITB #26-06

CAMBRIDGE PUMP STATION UPGRADES

Name of Business: _____

Contact Person: _____

Email Address: _____

Authorized Signature: _____

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

ITEM #	DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	EXTENDED PRICE
GENERAL					
1	Mobilization/General Conditions	LS	1		
2	Insurance, Performance and Payment Bond	LS	1		
3	Project Closeout/As-Built Drawings	LS	1		
4	Preconstruction Video	LS	1		
5	Construction Testing (Pressure, Density)	LS	1		
6	General Site Restoration	LS	1		
7	Clear & Grubbing	AC	0.6		
8	Performanc Turf, Sod	SY	1,340		
9	Dewatering	LS	1		
10	Pump Station Demolition, including but not limited to: - Sandbags - Pile Wall with Concrete Cap - Drainage Structure - Existing Piping - Pipe Supports - Outfall Structure - Screens	LS	1		
11	Bypass Pumping	LS	1		
PROPOSED IMPROVEMENTS					
12	54" DIP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	473		
13	72" PCCP Piping - Storm Main (Including Fittings, Reducers, etc.)	LF	452		
14	Pipe Supports	EA	6		
15	54" DI Check Valve	EA	3		
16	54" DI Gate Valve	EA	3		
17	72" Pipe Header	LS	1		
18	Jack & Bore Installation (54-in DIP with 72" STL casing)	LF	125		
19	Floating Debris Boom	EA	1		
20	Pipe Culvert, Optional Material, Round, 10"	LF	23		
21	Pipe Culvert, Optional Material, Round, 36"	LF	166		
22	Articulating Concrete Block Revetment System, 6" Thickness	SY	1,562		
23	Inlet, Dt Bot, Type D, <10'	EA	1		
24	Inlet, Dt Bot, Type E, <10'	EA	1		
25	Manhole Type J-7, <10'	EA	2		
26	Mitered End Section, Optional Round, 36"	EA	1		
27	Tideflex Duckvalve Backflow Preventer	EA	1		
28	Sediment Barrier	LF	412		
29	Floating Turbidity Barrier	LF	569		
30	Staked Turbidity Barrier	LF	561		
31	Electrical	LS	1		
				TOTAL PRICE	

LEGEND:
LS - LUMP SUM
CY - CUBIC YARD
SY- SQUARE YARD
EA-EACH
AC- ACRE
LF - LINEAR FEET

BID BOND**BID BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name/Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:

A.M. Best No.: _____ NAIC No.: _____

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

END OF BID BOND

This document must be completed and returned with your Submittal

PAYMENT & PERFORMANCE BOND (for informational purposes only)

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

☐ I hereby certify that I do not utilize an employee leasing company or employ leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing agreement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the workers' compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

This affidavit must be completed and returned by the Awarded Bidder upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of _____

County of _____

I, _____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20____ to _____, 20____.

WITNESS:

By: _____

Name: _____

CONTRACTOR:

Company: _____

By: _____

Name/Title: _____

Sworn to/Affirmed and subscribed before me this _____ day of _____, 20____, by _____, who is personally known to me or who produced _____ as identification.

NOTARY PUBLIC – STATE OF

Type or Print Name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

IMPORTANT: This certificate must be completed and returned by the Awarded Proposer upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

[illegible]

The undersigned (“Affiant”), on behalf of the entity listed below (“Entity”), after being duly sworn, hereby attests as follows:

1. My name is _____. I am over the age of Twenty-one years old. I am the _____ of _____, a non- governmental entity which does
(Title) (Business Name)
business in the State of Florida, hereinafter called the “Entity.”
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: _____, 20____

Signed: _____

Print Name: _____

Title: _____

SUBSCRIBED AND SWORN before me by means of [XX] physical presence or [] online notarization on the ____ day of _____, 20__ by _____ as _____ on behalf of _____ who is personally known to me or who has produced _____ as identification.

(Notary Seal)

Notary Public, State of Florida
Printed name, commission and expiration of commission term

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and _____ ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

_____.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

_____.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, _____, **P.E.** ("Engineer") of _____, and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within ____ days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and

that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$0.00 for each day that expires after such time until the Work is completed and ready for final payment.

3. Deleted in its entirety.

- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit

Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. **95%** percent of the value of the Work completed (with the balance being retainage).

- 1) Deleted in its entirety.

- b. Deleted in its entirety.

B. Owner shall withhold Five percent (5%) of each progress payment as retainage.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest Deleted in its entirety.*

A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement (pages 1 to __, inclusive).
2. Bonds:
 - a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages _____to __, inclusive).
7. Addendum No. __ (pages __ to __, inclusive).
8. Addendum No. __ (pages __ to __, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (page __, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages _to __, inclusive).
 - c. Exhibit No. 3 Composite Exhibit No. 3 City's _____ (pages __to __, not attached, on file with office of the City Clerk).
 - d. Exhibit No. 4 General Decision Number FL_____ Davis-Bacon Wage

Determination (pages __to __ inclusive).

10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.02 *Successors and Assigns*

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.03 *Severability*

Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions and parts shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision or part that comes as close as possible to expressing the intention of the stricken provision.

9.04 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay

to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

There are no intended third-party beneficiaries to the Contract.

9.06 *Public Record Compliance*

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically: (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the City would provide the records at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

9.07 *Records*

The design, permits and all other records prepared by the Contractor, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Contractor shall be retained by the Contractor for the requisite time set forth in Florida Administration Code Rule 1 b-24.

<http://dos.myflorida.com/library-archives/records-management/>. Contractor may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. Contractor agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney.

9.08 *Force Majeure*

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure

shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

9.09 *Contract construction*

This Contract may be executed in one or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Contract shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until both Parties have signed this Contract.

9.10 *Financial Disclosures*

During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts in accordance with Generally Accepted Accounting Principals (GAAP). Contractor further covenants and agrees that in the event the Contractor becomes insolvent and/or fails to pay its current obligations when they become due, Contractor shall so advise Owner of such situation and, upon request from the Owner, Contractor shall provide to Owner financial statements of Contractor, including current income and expense statements of Contractor, consolidated balance sheets signed by a financial officer of Contractor, and audited reports provided by Contractor to Contractor's Surety, audited financial statements certified by a Certified Public Accountant concerning the financial affairs of the Contractor and all affiliates of Contractor, and such other financial information requested by Owner. All such financial information shall comply with GAAP.

In the event that Contractor becomes insolvent and/or fails to pay its obligations when they become due, Contractor hereby authorized its sureties, lenders, financial institutions and other third parties to release Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding paragraph.

9.11 *Waiver of Jury Trial*

All parties hereby waive any and all right to any trial by jury in any action or proceeding arising directly or indirectly hereunder.

9.12 *E-Verify*

Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract and shall expressly require any sub-contractors performing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

9.13 *Compliance with Other Federal Standards*

(a) Termination for Cause. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms are set forth in Article 16 of General Conditions.

(b) Termination for Convenience. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Article 16 of General Conditions.

(c) Termination for Non-Appropriation of Funds.

(i) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

(ii) The City agrees that should it terminate in accordance with this Section, it shall not obtain

services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

(d) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of

this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant

orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In

addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics,

including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within

30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by

the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of

agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be

greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1)

through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).”

(e) Copeland Anti Kick Back Act: Compliance with the Copeland “Anti-Kickback” Act.

(i) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include the clause in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor the contract clause.

(iii) Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a Contractor and subcontractor as provided in 29

C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(1) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the *Contract Work Hours and Safety Standards Act* and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

[Clean Air Act](#)

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by Federal Awarding Agency.

[Federal Water Pollution Control Act](#)

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (2) The Contractor agrees to report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by Federal Awarding Agency.

(i) Suspension and Debarment. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference, is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*, included in the solicitation and made a part hereof by reference.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services. If applicable to the Federal awarding agency requirements:

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

(2) *Prohibitions.*

(i) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(ii) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

(i) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(ii) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*

2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

(i) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is

notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

- (ii) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (5) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- (n) Access to Records and Reports:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the Federal Awarding Agency Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(o) Changes. To be allowable under the Federal agency award or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

(p) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that Federal Award financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, Federal Awarding Agency policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug-Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years pursuant to 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This

provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by Federal Awarding Agency.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to Federal Awarding Agency, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to Federal Awarding Agency.

Required Certification: If applicable to this Contract, for Federal financial assistance programs subject to BABAA Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City). IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Contractor:

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If company is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____

(typed or printed)

Address for giving notices:

Phone: _____

Email: _____

License No.: _____

State: _____

Owner:

City of Port Orange

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: Donald O. Burnette
(typed or printed)

Title: Mayor
(typed or printed)

Attest: Robin L. Fenwick, MMC
(individual's signature)

Title: City Clerk
(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500



End of Solicitation Documents

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange.)**

1. Company Name: City of Melbourne
Contact Person: Tom Baker, PE
City, State: Melbourne, Florida
Telephone Number: 321 - 288 - 0944
Email Address: Thomas.Baker@mlbfl.org
Description of goods/services provided: Complete SS Lift Station Replacement
Contract Amount: \$2,795,000.00
Start/End Date of Contract: 8/24 to 9/25
2. Company Name: DRMP, Inc.
Contact Person: Scott, DRMP
City, State: Merritt Island, Florida
Telephone Number: 321 - 453 - 0010
Email Address: snickle@drmp.com
Description of goods/services provided: Brevard County - S19 - Complete Lift Station Replacement
Contract Amount: \$1,285,000.00
Start/End Date of Contract: 7/22 to 8/23
3. Company Name: Seminole County
Contact Person: John Miller, Project Coordinator II - Public Works/ Engineering
City, State: Sanford, Florida
Telephone Number: 407 - 665 - 5611
Email Address: jmiller04@seminolecountyfl.gov
Description of goods/services provided: 2848 LF of 48" RCP & Junction Boxes
Contract Amount: \$2,061,225.00
Start/End Date of Contract: 6/23 to 4/24

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange.)**

1. Company Name: City of New Smyrna Beach
Contact Person: Kyle Fegley, P.E., City Engineer
City, State: New Smyrna Beach, Florida
Telephone Number: (386) 410-2811
Email Address: kfegley@cityofnsb.com
Description of goods/services provided: Drainage, underground utilities, etc.
Contract Amount: \$11,167,209.24 and \$1,465,484.04 (2 projects)
Start/End Date of Contract: 2017-2019, 2025-2026
2. Company Name: Flagler County (Graham Swamp & Pedestrian Bridge)
Contact Person: Amy Stoger
City, State: Flagler County, Florida
Telephone Number: (386) 313-4047
Email Address: astroger@flaglercounty.gov
Description of goods/services provided: Drainage, concrete work, pipe culvert, jack-n-bore, etc.
Contract Amount: \$9,858,121.65
Start/End Date of Contract: 2020-2023
3. Company Name: City of Edgewater
Contact Person: Matt A. Creel, Chief City Engineer/Infrastructure Project Manager
City, State: Edgewater, Florida
Telephone Number: (386) 424-2400 ext 4009
Email Address: mcreel@cityofedgewater.org
Description of goods/services provided: Drainage (60", 54", 36" endwalls installed); manholes; MES installed
HDPE installed; relocated underground utilities; excavation; holding ponds
Contract Amount: \$3,008,030.89
Start/End Date of Contract: 01/05/26 to substantial complete 5/11/26

This document must be completed and returned with your Submittal.

Current and Projected Workload

Project	Client	Commencement & Completion	Amount
Pluckebaum Rd. Stormwater	Brevard County	06/2026-05/2027	\$3,797,797.00
Apogee Road	Kennedy Space Center	05/2025-06/2026	\$251,300.00
CT-6 East Garage	GC: Ivey's Construction Inc. Owner: Canaveral Port Authority	05/2026-10/2026	\$1,333,000.00
BCF Ruby St. Stormwater Improvement	GC: Heard Construction Inc. Owner: Brevard County Facilities	06/2026-10/2026	\$560,575.00
Florida Shores, Beach Ramp/Seawall	Volusia County	10/2026-03/2027	\$1,676,000.00
Lift Station 42 Melbourne	Owner: City of Melbourne	11/2025-6/2026	\$697,525.00
Pinto Way	Orange County	06/2026-10/2026	\$1,115,530.00
Burnett Rd. Stormwater	Brevard County	06/2026-12/2026	\$2,550,055.00
Relocate Weather Ops	GC: CCI Utility & Construction Services Owner: CC Space Force	01/2027-07/2027	\$1,077,407.00
El Portal Beach Ramp/ Seawall	Volusia County	10/2026-02/2027	\$743,365.00
Playalinda Beach Platform	GC: CORE Engineering Owner : Kennedy Space Center	05/2026-08/2026	\$251,389.00
Volusia Seawalls	Volusia County	06/2026-10/2026	\$1,654,000.00
Indian Harbour Baffle Box	City of Indian Harbor	05/2026-08/2026	\$1,137,900.00
Culvert Repairs	GC: Aleut Federal Owner: Kennedy Space Center	05/2026-08/2026	\$631,000.00

FORM 7.9 - LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful Bidder shall not substitute subcontractors without approval from the City Representative. Bidder shall attach additional sheets as necessary.

Subcontractor No. 1Name: Mersino/ IroncladDescription of Work: Dewatering/ Bypass PumpingPercent of Contract Price: 5.6Previous Experience Together: ☒ Yes ☐ No**Subcontractor No. 2**Name: Huxted TrenchlessDescription of Work: 72" Casing Installation (J&B/ Microtunneling)Percent of Contract Price: 13.2Previous Experience Together: ☐ Yes ☒ No**Subcontractor No. 3**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 4**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 5**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

Sec. 2-266. - Determination of lowest and best bidder.

In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

(Code 1981, § 8-30)



**City of Port Orange
Purchasing Manual
April 2017**

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MISSION

The mission of the Purchasing Division is to provide for fair and equitable treatment by the City of all persons involved in public purchasing, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

THE NEED FOR COMPETITION

The City Council and City Manager recognize that open and fair competition is a basic tenet of public procurement. Competitive purchasing reduces the appearance and opportunity for favoritism and aims to award contracts in an equitable and economical manner, establishing public confidence in the purchasing process. In addition to fair and open competition, competitive procurement enables the City to acquire goods and services at the best available value by evaluating factors such as price, quality, design and workmanship.

INTRODUCTION

The operation of City of Port Orange government requires a tremendous diversity of skills, crafts, trades, and professions and covers a multitude of functions and services. By the very nature of its diversification of enterprises and the large scope of work covered, delegation of authority is necessary.

All personnel acting on behalf of the City are tasked to operate these many functions as efficiently and economically as possible. Therefore, it is necessary that everyone work together as a team to eliminate excess effort and waste for the efficient and effective operation of City government.

Procurement is a function that has a significant operational and financial impact on City government. The Purchasing Division is a service department that facilitates the procurement of materials, supplies, equipment, and professional, technical, and contractual services required for City operation. The Purchasing Division also has a control function to ensure compliance with laws, rules, and regulations concerning the purchase and disposal of goods and services and that all transactions are carried out under the highest ethical standards. The Purchasing Division also provides resources, research, and information on new products and services, as well as trends and opportunities.

Since all purchases are made with taxpayer dollars, there are many laws, rules, and regulations governing how procurement should be conducted in the City of Port Orange.

This manual has been developed in accordance with such regulations to serve as a framework for well-informed decisions. Due to the diversity of needs and requirements and differing rules and regulations governing each type of purchase, not all possibilities

can be addressed in this manual. Its purpose is to point out the duties and responsibilities of those involved in the procurement function and to assist individuals in maintaining the City's reputation for fairness and integrity. The goal is to promote the City's best interests through intelligent action and fair dealing in order to obtain the maximum value for each dollar of expenditure.

Public Records (Sunshine Law)

The City is governed by the Florida Public Records Laws, Chapter 119 of the Florida Statutes. Memos and internal correspondence concerning any purchasing matter are public record and are available for public inspection.

Exemptions from Public Records

The Purchasing Division abides by FL Statute 119.071, which exempts solicitations from public record until the City provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. If the City rejects all bids, proposals, or replies submitted in response to a competitive solicitation and concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the City provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Financial statements submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt. Proprietary information submitted by vendors may be exempt in certain instances.

Ethics

All City employees are bound by the City's Ethics Statement and the Code of Ethics for Public Officers and Employees as prescribed in Florida Statutes, Chapter 112. If there is any question regarding ethical conduct or action, please contact the Legal or Purchasing Department before any action is taken.

Conflict of Interest

A conflict of interest is any circumstance in which the personal interest of a committee member may prevent or appear to prevent the member from making an unbiased decision with respect to the matter. A conflict of interest is also any conflict as defined in City Code, Florida Statute, or Federal Regulation. The provisions of Florida Statutes, 112.313 apply regarding conflict of interest. In addition, City Ordinance Sec. 2.259, states that City employees should not have business dealings with the City, unless City Council has determined that such dealings are in the best interest of the City. Any violation of these provisions by a City employee may be grounds for disciplinary action.

Purchasing and Contract Authority

Purchases and contracts having a cost of greater than \$25,000, unless otherwise exempt, shall be approved by council. (Code Sec. 2-267)

The City Manager is responsible for the procurement of goods and services paid for by City funds and is authorized to expend monies for purchases when (1) the total is \$25,000 or less, or when (2) the purchase is exempt from the \$25,000 limit, both as prescribed by council ordinance, as amended and restated from time to time. The Finance Director shall promptly revise this policy to conform to each adopted council ordinance. The City Manager may delegate authority in writing to a department head for the approval and execution of a contract that does not exceed \$5,000.

The City Manager may permit the procurement of goods and services not exceeding the City Manager authority by use of a current vendor application as approved by the Finance Director and a purchase order based upon vendor quotations, as required by this policy. Purchases based only on a current vendor application and purchase order not exceeding \$15,000 shall not require review by a city attorney for sufficiency and compliance with formally adopted laws and regulations, unless otherwise requested by the City Manager, the Finance Director or applicable department director.

Only authorized persons may make purchases, obligate the city, or sign contracts involving the expenditure of City funds. The City shall not recognize a contract or agreement as binding unless executed by an authorized employee in accordance with this policy. Employees who enter into contracts or agreements that are not consistent with this policy or otherwise make unauthorized purchases shall be subject to disciplinary action and may be subject to legal liability.

PURCHASING METHODS

Petty Cash

Each department may have a petty cash fund up to \$500.00. The Finance Director, with the concurrence of the City Manager, establishes an appropriate and reasonable operating petty cash balance based on need and frequency of usage. Individual purchases cannot exceed \$50.00 and cannot be used for items that are readily available in City stockrooms. Dividing large purchases into amounts less than \$50.00 is prohibited. Misuse of petty cash funds is not tolerated and is grounds for disciplinary action.

All petty cash expenditures must be logged and each purchase must be documented by a receipt from the vendor stating the quantity, price, date, vendor's name and address, and the name of the City employee authorized to make the purchase.

Purchasing Card

The purchasing card (p-card) is ideal for small dollar, non-recurring purchases. In general,

purchases made using an awarded contract should not be charged to a p-card. Purchasing cards are issued in an employee's name and have spending controls and limits. The per-transaction limit for purchases is set at \$1,999.99 or less. A monthly spending limit is also established based on anticipated usage. Purchasing cards are only issued upon written request from the Department Director. Purchasing card holders must attend a mandatory purchasing card training. Refer to the Purchasing Card Manual for additional procedures for this program.

Purchase Order

The majority of City purchases are made using a purchase order (PO). Requests for purchase orders (requisitions) are made electronically through the financial accounting system.

PURCHASE ORDER SYSTEM

Requisition Process

When a department has a purchase request, it submits a "requisition". The Purchasing Division makes great effort to approve requisitions quickly. Departments should submit requisitions far enough in advance to allow sufficient time for proper approvals, order processing and delivery. In general, user departments should submit a requisition at least one (1) week before the purchase is needed. Purchases that are unusual, specialized in nature or high dollar, require additional review and approval and take more time to process.

The first step in initiating a requisition is to identify the items needed and associated costs. The department must follow the purchasing guidelines (see Purchasing Thresholds section) to determine if a quote or formal solicitation is needed. Once the department has decided on the cost and vendor, a requisition can be entered in the system. The requestor must enter a description of the purchase, specific item names/numbers, quantities, amounts, delivery requirements, and other applicable terms and conditions. If the contract is greater than \$25,000, a fully-executed and approved contract must be attached to the requisition.

The requisition will pass through the electronic system gathering proper approvals along the way. Certain purchases require additional approvals, such as technology purchases. Once the final approval is made, the Purchasing Division will turn the request into a purchase order. The PO is then sent to the vendor by the department and the purchase can be made. See the Procurement Methods Process Map for additional information.

The Purchasing Division should be consulted to determine the best procurement method, to verify whether the City has existing contracts, and to determine if the purchase is exempt from competitive purchasing requirements.

Blanket Purchase Orders (BPO)

A blanket purchase order can be used when multiple orders will be made from one vendor throughout the year. A BPO establishes a maximum dollar limit to be spent with a specific vendor. Since the specific items to be purchased are usually unknown at the time of issuance, line item pricing is not used.

Master Agreement

A master agreement is often the contract associated with a BPO because it is an indefinite quantity agreement. It is used to facilitate purchases when the exact quantity of a required commodity or service is unknown or varies upon the using department's needs. A master agreement is used to purchase goods or services needed frequently for operations and maintenance (See Master Agreement section). A task authorization is typically required to request services under a Master Agreement.

Task Authorization

Task authorizations are specific, detailed services or jobs placed against an awarded, established contract.

PURCHASING THRESHOLDS

The following standards for acquiring goods and services has been established by the City. Purchases must not be subdivided to avoid the purchasing thresholds below. Separate purchases from the same vendor by different departments for different purposes are not considered subdivided purchases. However, such purchases will be reported to City Council on a quarterly basis or as soon as practicable, and will follow the bidding guidelines outlined in the Purchasing Manual, to ensure cost efficiency and maximize competition. In determining the purchasing threshold, consider not only the immediate transaction, but the purchasing needs for that commodity class and group on a City-wide basis.

Small Purchases - up to \$2,500.00

Purchases up to \$2,500.00 are purchased on the open market if the quoted price appears fair and reasonable. The City Manager has the authority to change the selected vendor if it is in the City's best interest to do so. Employees are encouraged to use a City-issued purchasing card for small purchases up to \$1,999.

Informal Quotes - \$2,500.01 to \$5,000.00

Requests for purchases between \$2,500.01 and \$5,000 require a minimum of two (2) verbal quotes. The requestor shall document, in writing, the name, telephone number, contact person, unit price, shipping and handling costs, and other applicable information as an attachment to the requisition. If two (2) quotes cannot be obtained, documentation

of the name(s) and phone number(s) of the non-responsive vendors must be submitted with the requisition.

Formal Written Quotes - \$5,000.01 to \$25,000.00

Requests for purchases between \$5,000.01 and \$25,000.00 require a minimum of three (3) written quotes. The department is responsible for reviewing the responses and selecting the lowest and best responsive and responsible quote received. The department must submit a copy of each written quote with the requisition.

Formal Solicitation – Greater than \$25,000.00

Purchases greater than \$25,000.00 require a formal, sealed solicitation prepared by the Purchasing Division. See the Competitive Solicitation section of this document.

Exemptions

Purchases exceeding \$25,000.00 require approval by City Council except for goods and services that do not lend themselves to the normal competitive bidding process and for which the City Manager has approved waiving the formal bidding requirements. The following purchases are exempt:

- Maintenance and service contracts for various types of technical equipment that are offered only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental, lease or lease purchase agreement's terms and conditions.
- Materials purchased directly from a producer or publisher, an owner of a copyright, an exclusive agent with the state, a governmental agency or a recognized educational institution.
- Public or regulated utility services or government franchised services.
- Commodities or contractual services available from a single source. (See the Sole/Single Source section)
- Professional services (except as otherwise provided for in Florida law) and contracts for professional services (which include, but are not limited to, services provided by attorneys, accountants, actuaries, lobbyists and financial advisors).
- Admission fees.
- Association fees and professional association dues.
- License fees and agreements.
- Media advertising (i.e., newspaper, radio, television, etc.).
- Permit fees.

- Petty cash replenishment.
- Postage.
- Registration fees.
- State fees (unemployment compensation).
- Travel reimbursement.
- Insurance coverage or claims expenditures as provided in the insurance fund, excepting, however, damage to City-owned property.
- Supplies, equipment and vehicles purchased at a public auction.
- Purchases from other governmental agencies, including City boards, community colleges, federal agencies, and agencies from other states, when the awarded contract by the other entity permits purchases by the city on the same terms, conditions, and prices (or below such prices) and the purchase is considered economically advantageous to the city.
- Purchase, sale, lease or rental of real property.
- Items for resale when purchased in compliance with the restrictions listed below:
 - a) Items purchased are exclusively for resale;
 - b) Items include brand name specifications significant to their retail sales appeal; and
 - c) Items, after reasonable expected resale, result in no cost to the City.

Exempt purchases over \$25,000.00 are subject to City Manager approval and may be submitted to Council for approval at the City Manager's discretion.

Emergency Purchasing

Emergency purchases are for goods and services necessary due to certain emergency conditions that may affect the health, safety, and/or welfare of the citizens or staff of the City, in accordance with City Ordinance, Sec. 2-271.

The City may forgo the requirements for competitive solicitations and the City Manager may make necessary purchases in preparation of, or during an emergency. Quotes must be obtained from at least two (2) vendors and documented with the purchase request, unless the City determines that the time required to obtain quotes will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the City. Emergency purchases must be approved by the City Manager prior to making the purchase.

An emergency is defined as an unplanned or unexpected event that requires immediate action to prevent or remedy a service outage; or to prevent or remedy a situation that presents an immediate danger to human life, health or safety or a significant loss or damage to property, and where failure to take immediate action would enhance the risk of loss or prolong the delay in restoring service to customers. Routine repairs and

planned refurbishment do not constitute emergencies.

Emergency acquisitions exceeding \$25,000.00 are subject to approval by City Council and will be ratified at the next regularly scheduled meeting, or as soon as practicable.

The agenda item must be submitted by the requesting department and must state the reason for the emergency purchase, the cause of the emergency, and the financial or operational damage or risk that would have occurred without the purchase.

COMPETITIVE SOLICITATIONS

The competitive solicitation process must be used for the procurement of goods and services estimated to exceed \$25,000.00. The Purchasing Division prepares a formal, sealed solicitation. Types of solicitations include Invitation to Bid (ITB), Request for Proposals (RFP), Request for Statements of Qualifications (RFSQ), Request for Information (RFI), and Invitation to Negotiate (ITN).

Invitation to Bid (ITB)

The Invitation to Bid is used for the purchase of commodities or services where the scope can be specifically defined. The ITB defines the specific commodity or service to a degree that cost is the only difference between bid submissions. Generally, the ITB is awarded to the lowest responsive and responsible bidder(s) in accordance with the lowest and best bidder criteria below.

An ITB is typically used when off-the-shelf goods or standard services are widely available and will meet the City's desired needs. In addition, concerns about vendor qualifications can be easily addressed by a simple submittal with the bid, such as a copy of an occupational license, certification by the manufacturer that vendor is a trained/authorized provider, satisfactory references, etc.

Development of the ITB - The Purchasing Division is responsible for compiling the overall ITB document.

1. Requests are received from departments and a meeting is scheduled to review bid requests, requirements and specifications.
2. Purchasing works with the requesting department in developing the specifications. The specifications must be clearly defined and include sufficient detail to promote maximum and fair competition.
3. Outside vendors may be contacted to review the preliminary bid specifications for minimum requirements, adequacy, uncertainty and potential limits to competition. This approach is used when the specifications are unusual in nature or are infrequently purchased by the City.
4. The Department works with Purchasing to develop the price sheet and other key documents that will be required in the solicitation.

Advertisement - Once the bid document is finalized, the ITB is advertised and posted to the City's online procurement website and the local news publication. The procurement website sends notification to registered vendors, who are responsible for downloading the ITB documents and submitting the bid by the required date and time.

Tabulation and Award - All bids are opened and bidder names are read aloud in public, at the designated date, time and place. Bidders and the public are welcome to attend, but it is not required. Bidders are not permitted to make changes to a bid during the opening. Any such attempts may result in rejection of the bid. The Purchasing Division tabulates the bids and verifies that all required documents are submitted. In general, bids are awarded to the lowest responsive and responsible bidder. After the tabulation, a notice of intended decision and the tabulation sheet indicating the award recommendation is posted to the procurement website. The purpose of this posting is to give public notice of the City's intended decision. This allows any adversely affected firm an opportunity to file a protest. An agenda item will be submitted to City Council by the Purchasing Division to recommend the award. The ITB process takes approximately six (6) to eight (8) weeks.

Determination of Lowest and Best Bidder

In determining the lowest and best responsible bidder, in addition to price, the following factors are considered:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) Previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Other factors pertinent to the bid or the contract under all of the circumstances involved.

Request for Proposal (RFP)

A Request for Proposal should be utilized for the purchase of goods or services where the specifications are clearly defined; however, various goods or services are available to meet those specifications. The RFP solicitation requires the vendor to "propose" a good or service to meet the general specifications listed. The main difference between an ITB

and an RFP, is that an RFP is used when various solutions exist and when cost is not the major factor in the award. If an RFP is the selected procurement method, the Purchasing Division must document, in writing, the reasons why an ITB are not practical.

Development of the RFP - The Purchasing Division is responsible for compiling the overall RFP document using the process below:

1. Requests are received from departments and a meeting is scheduled to review the request, requirements, specifications and evaluation criteria/scoring system.
2. Purchasing works with the requesting department in developing the specifications and evaluation criteria/scoring system, which must be clearly defined and include sufficient detail to promote maximum and fair competition.
 - a. Price and prior relevant experience must be included in the evaluation criteria.
3. Prior to issuing the solicitation, outside vendors may be contacted to review the preliminary specifications for minimum requirements, adequacy, uncertainty and potential limits to competition. This approach is used when the specifications are unusual in nature or are infrequently purchased by the City.
4. The department director overseeing the RFP, assembles an evaluation committee of three or more to assess the proposals.

Evaluation and Award - The Purchasing Division facilitates the evaluation committee meetings, instructs evaluation committee members on their responsibilities and ensures that the evaluation process is conducted in a fair, transparent, and equitable manner.

1. After responses are received by the Purchasing Division, proposals are distributed to the evaluation committee members for independent evaluations.
2. The committee reviews the proposals in accordance with the predetermined scoring system and ranks the firms.
3. Top-ranked firms are invited to present their proposal and/or interview with the evaluation committee.
4. After the presentations/interviews have been conducted, the evaluation committee scores the firms in accordance with the evaluation system and reaches consensus. Further negotiation may be needed to finalize the contract. If negotiations cannot be reached with the top ranked firm, the committee may move to the next highest ranked firm.
5. An agenda item will be submitted to Council by the Purchasing Division to recommend the award of the RFP and associated contract(s). The RFP process takes approximately nine (9) to twelve (12) weeks.

Request for Statements of Qualifications (RFSQ)

A Request for Qualifications (RFSQ) is utilized for services such as architectural, engineering, landscape architecture, surveying, mapping, construction management and design/build services and where price is not a factor. An RFSQ differs from an ITB and

RFP in that, while the service specifications are clearly defined, the delivery of the services may be significantly affected by the qualifications, influence or position of the firm within the industry. The focus of the evaluation is on the quality and the level of services offered. An RFSQ is typically governed by the Competitive Consultants Negotiation Act (CCNA) which requires state government agencies, municipalities or political subdivisions, school boards and school districts, to select consulting firms based on qualifications, rather than on a “lowest bid” basis.

Development of the RFSQ – The RFSQ is developed in the same manner as the RFP, except that price is not considered when developing the evaluation criteria. Evaluation criteria should include statements of qualifications and performance data on file with the City. In determining a firm’s qualifications, consider the following:

- Professional personnel
- Whether a firm is a certified minority business enterprise
- Past performance
- Willingness to meet time and budget requirements
- Location
- Recent, current, and projected workloads
- Volume of work previously awarded to each firm by the City in an effort to make an equitable distribution of contracts among the ranked highly qualified firms

If the solicitation is for a specific proposed project, discussions and presentations are required by at least three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

Evaluation and Award - The RFSQ is awarded in the same manner as the RFP, except that price is not considered when evaluating the proposals. At least three firms must be ranked in order of preference and best qualified to perform the required services. The City will negotiate a contract with the most qualified firm at a fair, competitive and reasonable compensation. In determining compensation, the cost of services along with the scope and complexity should be considered. If negotiations cannot be reached with the highest ranked firm, the City should begin negotiations with the second most qualified firm, and so on until negotiations are reached. This process takes approximately six (6) to twelve (12) weeks. See the professional services for design and construction section for additional information related to RFSQS.

Invitation to Negotiate (ITN)

In cases where an ITB or an RFP are not practicable and will not result in the best value to the City, the Purchasing Department may initiate an Invitation to Negotiate. The ITN is used to determine the best method for achieving a goal or solving a problem for the best value. This process may be utilized when specifications cannot be defined, or there are unknown areas, volatile markets, etc. and negotiations are key to receiving the best value. Typically, ITNs are used for non-standard or highly complex purchases and where there is limited availability of competition.

Development of the ITN - The ITN is developed in the same manner as the RFP, except that the City must document in writing its reasons why an ITB or RFP is not practical. The ITN must also describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation. The Purchasing Division will appoint a qualified negotiation team. The Purchasing Division must document, in writing, the reasons for utilizing the ITN process.

Evaluation and Award - The ITN is awarded in the same manner as the RFP, except that after the evaluation process, and upon submission of the top-ranked firms to Council, approval is requested to simultaneously negotiate with the top-ranked firms to obtain the best value for the City. After City Council authorizes staff to negotiate, the team completes the negotiations and finalizes the contract. The final contract, signed by the top-ranked firm, is presented to the City Council for approval by the Purchasing Division. The contract negotiation phase of the contract can be lengthy and the overall ITN process takes approximately twenty (20) weeks.

Sole/Single Source

Sole source purchasing is used when a good or service is only available from one source and cannot be competitively procured. There are very few absolute single source products and services, most single source purchases are situational. A true sole source purchase usually results from vendor patents and copyrights. A request for a proprietary item does not justify a sole source purchase if there is more than one potential supplier for that item. Use of brand names and model numbers alone do not constitute a sole source; however, certain manufacturers may require particular brand names and model numbers to maintain product warranties.

Departments should submit sole source requests, including a justification statement detailing why the product or service is the only available solution that will produce the desired results. A letter or statement from a dealer, distributor or manufacturer is also required.

The justification statement should answer the following questions:

- What is the purpose of this purchase?
- What specifications does the product or service offer that others do not?
- Why is the product or service being selected over other products or services?
- Have other products or services been evaluated?
- Why do the other products or services fall short of the specifications?

If the Purchasing Manager agrees that the purchase is a sole source, the Purchasing Division will post a description of the goods or services sought for at least seven (7) business days on the City's website and other available purchasing websites. The description must include a request that prospective vendors provide information regarding their ability to supply the goods or services described. After reviewing the information received from prospective vendors, the Purchasing Manager must determine in writing

whether the goods or services are available from a single source. Professional judgment should be used in determining a sole source purchase; following the single source posting requirements is not, in itself, sufficient documentation of a sole source purchase.

If the purchase is determined to be a single source, the Purchasing Division must provide a notice of its intended decision to enter into a single source purchase contract. A contract negotiator should be used to negotiate favorable terms for the City. If it is determined that the purchase is not a single source, the competitive purchasing process must be used in accordance with the established thresholds. Sole source contracts should be made for shorter, reasonable periods of time since the market is everchanging and should align with the resoliciting schedule.

COMPETITIVE SOLICITATION PROCESS

Planning Formal Solicitations

Departments should plan accordingly for the solicitation process. The solicitation timeline varies based on the complexity of the solicitation and additional time should be allotted for solicitations other than ITBs. The timeline can be reduced by a departments willingness to prioritize solicitation meetings and by quickly resolving questions from the Purchasing Division. City Council meeting schedules and agenda item deadlines must be adhered to and may increase the timeline for solicitations.

Creating the Specification and Statement of Work

While the term, "specification" describes a product, the terms "statement of work" or "scope of work" describes a service. The two terms are often used interchangeably when speaking in a generic sense.

A statement of work is a narrative description of the required work. It stipulates the deliverables or services required for fulfilling the contract, and it defines the task to be accomplished or services to be delivered in clear, concise, and meaningful terms. The term "specification" describes the physical or functional characteristics or the nature of a product. It may include a requirement for inspecting, testing, or preparing goods or services for delivery.

Specifications/scope of works may be written as design specifications, performance specifications, or a combination. Design specifications define each detail and component that compose the entire project and are commonly used in the traditional design, bid, and build approach. Conversely, performance specifications define the desired results or desired output and are commonly used in brand name or equal descriptions.

The specifications and/or statements of work are the foundation of the procurement process. They should be drafted with the objective of clearly describing functional and performance requirements. It is the responsibility of the using department to clearly understand its needs and requirements and to effectively communicate those needs to

the Purchasing Division. The Purchasing Division will assist the using department in writing specifications and/or statements of work for products or services, if requested.

In some cases, the City may enlist the help of outside agencies or consultants in drafting the specifications and/or statements of work; however, at no time shall a department engage in accepting specifications written by a potential bidder or proposer of a commodity or service. If a vendor is used to develop a statement of work or specification, the vendor is prohibited from participating in the solicitation process.

The City purchases standard commercial products whenever practical. When developing specifications and/or statements of work, acceptable commercial standards should be used and unique requirements should be avoided, to the extent practical. Specifications that list a brand name "or equal" description are intended to be descriptive and not restrictive, and to indicate the minimum quality and characteristics of the products that will be accepted. Proposals offering "equal" products will be considered for award if such products are clearly identified in the proposal and are determined by the user and the Purchasing Division to fully meet or exceed the specifications. For approved equals, the burden of proof rests with the Vendor, unless otherwise specified by the City. The City is the sole judge in determining equality and acceptability of products offered.

The department should consider the total costs of ownership and operation as well as the initial purchase costs when defining the work. City policy dictates that specifications and/or statements of work permit maximum practical competition consistent with this purpose.

Public Advertising Requirements

Formal solicitations must be publicly advertised on the online purchasing website. In addition, solicitations must be advertised in a newspaper of general circulation in the County, and having general circulation in the City, at least 12 days prior to the solicitation due date. Additional advertising schedules may be proposed depending upon the type and cost of the solicitation. In general, a longer advertising window will increase the potential for more respondents and it is recommended that solicitations be advertised for at least 21 days. Advertising a solicitation for too short of a window may lead to a "non-response" and cause the entire solicitation process to restart from the advertising phase.

Advertisements must include:

- A general description of the goods or services desired
- Where to obtain solicitation documents
- The time and location of the solicitation due date and opening

Advertising Schedule

Type	Times	Minimum*
ITBs, RFPs, ITNs ¹	1	12 days
Construction > \$200,000 ²	1	21 days**
Construction > \$500,000 ²	1	30 days**
Sale or Lease of City Real Property ³	1/wk	2 weeks
Sole/Single Source ⁴	1	7 days
Utilities ⁵	1/wk	2 weeks

*Minimum - number of days from the date of advertisement until the bid due date.

** Public advertisement must also occur at least 5 days before any pre-bid meeting.

¹ City Ordinance 2-263

² Florida Statutes 255.0525

³ Florida Statutes 125.35

⁴ Florida Statutes 287.057

⁵ Florida Statutes 180.24

Pre-Solicitation Conferences

A pre-solicitation conference is typically scheduled and conducted by the Purchasing Division between the date of advertising and the formal opening. The purpose of the conference is to explain the purchasing requirements and forms used in the solicitation package.

In some cases, a mandatory conference is held and potential bidders are required to attend. Proposals from vendors not attending the mandatory conference will not be considered. Mandatory conferences impose restrictions on competition, and therefore, must be justified and approved by the Purchasing Division prior to the release of the solicitation. Conferences should be properly noticed and advertised.

Cone of Silence

The term "Cone of Silence" means a prohibition on communication regarding a competitive solicitation between any person who seeks an award and any Council member or person involved in the evaluation or recommendation in the competitive procurement process. While the Cone of Silence is in effect, all vendor communications must flow through the Purchasing Division. A vendor may ask questions during the pre-solicitation conference or through written communications with the Purchasing Division. The Purchasing Division will document any questions, clarifications, or changes to the solicitation in a written addendum published on the electronic procurement system.

A Cone of Silence is applied to each competitive solicitation at the time of issuance. A public notice of the Cone of Silence will be sent via electronic communication to City Council and any other person involved in the review, evaluation, recommendation, approval, rejection or award of the responses as appropriate. All solicitation advertisements and documents must include a statement disclosing the Cone of Silence requirements. The restriction on communications terminates when the City Council meets to make a final decision.

The purpose of a Cone of Silence is to prevent bidders or their representatives from lobbying Council and City employees during the solicitation process. Communications with vendors can impair independence and the integrity of the competitive procurement process. The entire solicitation process can be compromised if the Cone of Silence is broken, possibly resulting in a decision to reject all bids and reissue the solicitation.

Evaluation Committee

Competitive solicitations, other than ITBs, require an evaluation team/committee. Council has delegated decision-making functions to the committee by asking the team to evaluate and recommend solicitation awards. The committee is responsible for:

1. Establishing the solicitation criteria used as a basis for evaluation.
2. Analyzing vendor qualifications to determine their ability to provide products/services at the desired result.
3. Determining if proposals are responsive.
4. Evaluating proposals based on the established criteria, independently or as a group.
5. Participating in ranking of price proposals.
6. Collaborating as a team to make an overall recommendation of award to Council.
7. Maintaining sufficient documentation to support decisions related to the recommendation of award and submitting the documentation to the Purchasing Division for inclusion in the solicitation file.

Meetings - Evaluation committee meetings are governed by the Florida Sunshine Law. Any discussion between evaluation committee members or any respondent regarding the solicitation outside of a publicly advertised meeting and which takes place before an intent to award is made, is prohibited. All requests for information, clarification, or the status of a solicitation should be directed to the Purchasing Division. If requested, the meeting minutes should be made available for public review. Original minutes shall be maintained in the solicitation file.

A member may utilize technology, such as conference calls, to participate in a meeting if presentations are not made at the meeting. If presentations are conducted, all members must be physically present. Interviews can be conducted via teleconference; however, all committee members must be convened as a group.

Reasonable public notice shall be given before any selection committee meeting. The notice must include:

- (1) Name and/or purpose of selection committee
- (2) Time and place of meeting
- (3) ADA requirements

All public meeting notices must be posted on the City website and procurement website at least one week before the meeting date. If the meeting is adjourned and reconvened at a later date, the second meeting must also be noticed. This includes any meeting where a presentation is made to the selection or technical committee.

Committee Members - The Purchasing Manager or designee shall open all evaluation committee meetings. At the initial evaluation meeting, the committee will appoint a chair. The committee should consist of staff or other representatives who have knowledge and interest in the purchasing project. The department should make member recommendations and determine whether to appoint a City Council member to the evaluation committee. A minimum of three committee members is suggested; however, five committee members is also acceptable. In order to avoid scoring issues, such as a tie, an even number of committee members is not recommended. If a committee member is unable to make the conference or continue as a member, a replacement member must be found.

Any person with a conflict of interest will not be appointed and a member will be removed from the committee if a conflict arises. A conflict of interest is any circumstance in which the personal interest of a committee member may prevent or appear to prevent the member from making an unbiased decision with respect to the matter. A conflict of interest is also any conflict as defined in City Code, Florida Statute, or Federal Regulation.

In some instances, a technical review committee is appointed by the Purchasing Manager to establish and/or review specifications or statement of work. A technical review committee does not generally fall within the requirements of an open public meeting.

Voting - All committee member voting must be recorded in the minutes. A committee member must be physically present for all of the presentations in order to vote. Once the individual votes are counted, the recommendation can be made.

Tabulation/Evaluation

General Overview

1. Formal solicitations are opened publicly at the date, time, and place designated in the solicitation and under the direct control of the Purchasing Division. The name of each bidder is read aloud and the bid package is reviewed to ensure required forms were submitted. For ITBs, the prices are read aloud and tabulated.
2. After the tabulation, the meeting is adjourned. Vendor bid response packages are reviewed by the Purchasing Division to determine responsiveness, responsibility, and/or qualifications. This process may take several days and varies with the

complexities of the solicitation. The department is also an integral part of this process, checking industry specific requirements and scope compliance, among other items.

3. After the review is complete, the Purchasing Division posts the tabulation to the online purchasing website. The Department Director is notified of the results and must post a Notice of Intent to Award on a Council agenda meeting within a reasonable amount of time. The Notice of Intent is simultaneously posted to the online purchasing website by the Purchasing Division.
4. The City Council has the authority to award or reject any or all proposals submitted in response to any competitive solicitation and to request new proposals or to purchase the goods and services in any other manner in accordance with purchasing policies.
5. Council's decision to award or reject is communicated by posting a Notice of Award to the online procurement website.

Evaluation of Responses

After the Purchasing Division has completed its review for responsiveness, responsibility, and/or qualifications, a determination is made to accept or reject the responses. If the responses are accepted, they are included in the tabulation/evaluation process.

Waiver of Irregularities

The City Manager has the authority to waive insubstantial or minor irregularities in formal solicitation responses. The irregularities must not have an adverse effect on the City's best interests, and must not affect the outcome of the selection process by giving an unfair advantage or benefit to a particular responder. The Purchasing Division is responsible for identifying such irregularities and submitting a recommendation to the City Manager. Waivers must be clearly noted in award recommendations submitted to Council.

Rejection of Solicitation Responses

The Purchasing Division may reject a response that is not responsive, responsible, or does not meet qualifications. The Purchasing Division must document in writing the reason for the disqualification. Below is a list of common reasons for the rejection of a response:

- The bidder is currently listed as "suspended or debarred" or is on the State's Suspended Vendors Listing.
- The response does not meet specified delivery or performance schedules as outlined.
- The response does not price out the bid in conformance to the required format, key price lines are blank, or a clear price is not listed.

- The bid is received late - after the stated opening due date and time.
- The response does not include:
 - Required proof of insurance and/or does not name the City as an additional insured on the policy.
 - A bid bond in accordance with the solicitation requirements.
 - Required information, literature, samples, or affidavits with bid.
- There is a reasonable basis to suspect conflict of interest or collusion.
- Other reasons that may be unique to a specific bid or solicitation.

Late Proposals

Solicitation responses received after the official date and time specified in the solicitation document are deemed late and will not be considered for award. Requests for modifications to solicitation responses received after the due date and time specified will not be considered. The City uses a timeclock at the specified solicitation opening location as the official timekeeping device.

Local Preference

Local preference is considered during the tabulation/evaluation process in accordance with City Ordinance Sec. 2-275 below:

- (a) Purpose. The City annually spends significant dollars on purchasing goods and services, and the dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues paid by businesses located within the City of Port Orange. The City Council has determined that funds generated in the community should, to the extent possible, be placed back into the local economy. Therefore, the City Council has determined that it is in the best interest of the City to give a preference to local businesses consistent with the process set forth in this section.
- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) Florida business means a business having its headquarters and principal place of business within the State of Florida, and not within Volusia County, at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of the State of Florida.
 - (2) Local business means a Port Orange business, Volusia County business, or Florida business as defined herein.
 - (3) Port Orange business means a business having its headquarters and principal place of business within the City of Port Orange at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or

such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of the City of Port Orange.

- (4) Principal place of business means the nerve center or the center of overall direction, control, and coordination of the activities of the business. If the business has only one business location, such business location shall be its principal place of business.
 - (5) Volusia County business means a business having its headquarters and principal place of business within the County of Volusia, and not within the City of Port Orange, at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.
- (c) Local preference process. Except where federal or state law, or any other funding source, mandates to the contrary, the City shall give preference to local businesses in the following manner:
- (1) Competitive bids.
 - a. Port Orange business. In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent of the lowest and best responsible bid submitted by a non-Port Orange business, then the Port Orange business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
 - b. Volusia County business. In any competitive bidding process where a Volusia County business is within five percent of the lowest and best responsible bid submitted by a business other than a Port Orange business or Volusia County business, then the Volusia County business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
 - c. Florida business. In any competitive bidding process where a Volusia County business is within three percent of the lowest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
 - d. Tied bid preference. In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

- (2) Request for proposals, qualifications or other qualitative submittals. In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittals where the bidders are rated by a point system, local businesses shall be granted the following preference:
- a. Port Orange business shall be granted up to eight percent of the available points.
 - b. Volusia County business shall be granted up to five percent of the available points.
 - c. Florida business shall be granted up to three percent of the available points.
 - d. Tied bid preference. In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.
- (d) Misrepresentation prohibited; penalty. Any business that misrepresents the local preference status of its firm in a proposal or bid submitted to the city shall lose the privilege to claim preference status, and shall lose eligibility to claim local preference status for a period of one year.
- (e) Local preference not required. This section shall not be deemed to require the granting of a local preference, and nothing herein prohibits the award of a contract to a non-local business where such award is in the public interest.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

Certification and Verification

A contractor claiming to qualify as a local business for local preference purposes must certify in writing on the designated form included in the competitive solicitation package. The vendor must provide the necessary documentation required to demonstrate its qualification as a local business prior to time of purchase or recommendation of award of contract.

Maintenance of Status

A vendor granted local preference resulting in a written contract must maintain its status as a local business throughout the term of the contract. Subcontractors must also maintain local status throughout the duration of the contract. This requirement must be included in the contract between the contractor and subcontractor.

Compliance

Noncompliance with the local preference policy is deemed a material breach of contract and is grounds for termination by the City. Further, it may subject the vendor to disqualification in accordance with City Code 2-276 Suspension and Debarment.

Solicitation Award

Solicitations are awarded in accordance with the criteria outlined in the solicitation; however, additional factors can influence the award of a solicitation.

No Response – If no responses are received, the Purchasing Division will review the non-response forms submitted by vendors to determine the cause. If the forms are not returned, the Purchasing Division will contact the vendors directly to determine the cause of non-response. This will help establish any necessary changes in specifications, requirements or proposed timelines prior to resolicitation.

One Response - The Purchasing Division aims to generate as many solicitation responses as possible; however, there are times when only one qualified response is received. If only one response is received, the Purchasing Manager or designee may negotiate the terms and conditions. The Purchasing Division must document in writing its explanation for negotiating the terms and/or accepting the sole response in lieu of resoliciting. City Manager approval is required for purchases up to \$25,000 and Council approval is required for purchases greater than \$25,000.

In any formal solicitation, which costs more than the bidding threshold of \$25,000, is awarded without competition, the individuals taking part in the development of the evaluation criteria, process, and award should attest in writing that they are independent of, and have no conflict of interest with the entities evaluated and selected.

Ties – In many instances, a solicitation is awarded to multiple bidders and the need for a “tie-breaker” is not necessary. However, when the solicitation is intended to be awarded to one vendor, tie bids are awarded in the order listed:

1. Drug-free workplace pursuant to FL Statutes 287.087.
2. Certified service-disabled veteran.
3. Local businesses (see Local Preference section).
4. Firm with the lowest volume of work on City projects within the last five years.

5. If all conditions are equal, the Purchasing Division will draw lots or flip a coin. This process must be witnessed by at least three individuals and the names and addresses of the witnesses and the facilitator must be documented in writing.

Over Budget - If the lowest, responsive and responsible bidder has submitted a price higher than the City's budgeted amount, the City may negotiate with the bidder to obtain a lower price and present such results to Council. Council may decide to reject all bids and may subsequently increase the budget necessary to reissue the solicitation.

Awardee Can no Longer Provide Goods/Services - If the awarded bidder can no longer provide the goods/services required in the solicitation, the Purchasing Division may authorize award to the next lowest, responsive and responsible, if price is reasonable. If the price is not reasonable and does not represent good stewardship of public funds, the goods/services should be resolicited.

Protest Procedures

Any person who is adversely affected by the City's decision or intended decision shall file with the Purchasing Division, a notice of protest. The protest must be filed in writing within 72 hours after the posting of the notice of decision or intended decision (intent to award) as set forth on a City Council agenda item or the City's online procurement website. A protest of the terms, conditions, specifications, ranking methods, or contract award, or other solicitation elements must be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and City holidays shall be excluded in the computation of the 72-hour time period established herein.

1. The formal written protest must be filed with the Purchasing Manager, in writing within 10 calendar days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based.
2. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings.
3. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances, which require the continuance of the solicitation or contract award process without delay, in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties in the following manner:
 - a) As soon as possible after receipt, the Purchasing Manager shall provide the written bid protest to the City Manager, City Attorney, and Department Director and Supervisor directly involved in the acquisition.

- b) The Purchasing Manager shall schedule within 7 business days, excluding weekends and holidays, a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to presenting the matter to Council. After reviewing all relevant information, the City Manager shall render a decision.
- c) If the protestor disagrees with the City Manager's decision, he may appeal to City Council at a formal council meeting. After reviewing the evidence, City Council will issue a decision. The City Council's decision is final; however, the protestor can appeal the administrative decision to the Circuit Court in Volusia County, Florida within 30 days of the City Council's final decision. Decisions at all levels shall be communicated in writing to the protestor.

Payment and Performance Bonds

Payment and performance bonds are required for construction related projects before commencing work. A performance bond is a surety bond issued by an insurance company of a bank to guarantee satisfactory completion of a project by a contractor. The City cannot require a contractor to secure a surety bond from a specific agent or bonding company. The bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity.
2. The contract number assigned by the contracting public entity.
3. The bond number assigned by the surety.
4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.

The City Manager has the authority to waive payment and performance bond requirements for City projects estimated to cost \$25,000.00 or less.

Insurance

Proof of insurance must be provided to the City upon request. Departments should work with the Purchasing Division and the Legal Department in advance to determine proper insurance limits and types.

The ACORD Insurance Form is the preferred insurance certificate as it summarizes essential information about vendor insurance policies, such as coverage types, policy numbers, insurance limits, and effective and expiration dates. The certificate should include a waiver of subrogation for worker's compensation and list the City as a certificate holder and additional insured. The City's standard and optional insurance requirements are detailed as follows:

Standard Insurance Requirements			
	Insurance	Standards	Comments
☐	Workers' Compensation <u>Additional Coverage:</u>	<u>Limits:</u> Coverage A – Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	☐ If Agreement 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.
☐	Workers' Compensation Officer(s) Exemption	<u>Documentation Required for Exemption: (must be attached to Purchase Order)</u> ☐ Florida Department of Financial Services business activities on exemption detail page. ☐ Verification of Workers' Compensation for employee(s) and subcontractor(s). ☐ List of all subcontractor(s) utilized for work provided by this Purchase Order.	
☐	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	☐ When work is on or under Railroad rights of way or properties, the Vendor shall take out and maintain during the life of the Agreement, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☐	Comprehensive: Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	<u>Limits:</u> Auto Liability Bodily Injury: \$200,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage

Additional Insurance Requirements

☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of agreement. "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 minimum	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	Agents acting on behalf of the City.
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	Department Head recommends waiver of Payment and Performance Bond for work under \$25,000.00.		
☐	Department Head waives Insurance, unless otherwise required by law.		

CONTRACT PROCESS

The contract process begins after the solicitation process is complete.

Signatures

Signature authorities are required in accordance with the Purchasing and Contract Authority section of this document. The authority levels are incorporated into the electronic financial system and the workflow components. For purchases, the signature authority is tied to the amount of the purchase. Contracts may only be signed by the Purchasing Manager, City Manager or designee, or the Chair of the City Council, as applicable.

Master Agreement

A Master Agreement is an indefinite quantity agreement used to facilitate purchases when the exact quantity of a goods or services is unknown or may vary depending upon the using department's requirements.

A Master Agreement must meet the competitive solicitation requirements and is normally issued for City-wide use. A department specific Master Agreement may be issued under certain circumstances. It is the department's responsibility to ensure that the Master Agreement is still valid prior to placing an order with the vendor.

Renewals and Extensions

Unless otherwise stipulated by the contract or awarded by Council, renewals and contract extensions must be documented in writing. When renewing a contract, benchmarks, market trends or other significant quantitative or qualitative factors should be used to support price reasonableness and the availability of best options. It is the department's responsibility to monitor the expiration dates of its contracts. In accordance with Florida Statutes 287.057, contract extensions and renewals must be in writing.

Extensions - Extensions are permitted for a period not to exceed 6 months and only one extension of a contract is permitted, unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor. Extensions are subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.

Renewals - Contracts may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever is longer. Renewals are subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties, except that a lower price may be negotiated. Renewals should be contingent upon satisfactory performance evaluations and are subject to fund availability.

Piggybacking

Purchasing regulations permit the purchase of goods and services using other governmental contracts, i.e., school boards, cities, counties, colleges & state universities, and State of Florida agencies, as well as out-of-state governmental agencies. When a government has competitively bid and awarded a contract for goods or services, the City can “piggyback” on the contract.

Florida State contracts and agreements are the most common form of piggybacking because they enable agencies to pool their buying power to lower total costs and reduce the administrative burden of the solicitation process while complying with purchasing regulations. Florida State contracts and agreements are maintained on the Florida Department of Management Services website. The State of Florida contracts should be reviewed prior to creating a City issued solicitation and should be used whenever practicable. To initiate a piggyback, the following conditions must apply:

1. The goods or services desired by the City must be the same as those specified in the other agencies solicitation.
2. The awarded vendor must “meet or beat” the awarded price.
3. The original solicitation document must allow for piggybacking.

If it is determined that a piggyback is appropriate, a Piggyback Form including the following information must be submitted to the Purchasing Division:

1. Solicitation number
2. Solicitation document and any addenda issued
3. Tabulation
4. Award documentation
5. Signed contract, if applicable
6. Confirmation from the agency that the contract is active and in good standing
7. If the contract is a percent discount on list price, a copy of the original manufacturer’s list price is required
8. A quote or letter from the vendor agreeing to extend piggyback pricing.

It is the department’s responsibility to submit the required information to the Purchasing Division when requesting a piggyback purchase. The Purchasing Division will review the piggyback request to ensure prices are reasonable and that the solicitation has been competitively procured. The Purchasing Division has the authority to deny the piggyback purchase if a direct purchase by the City is more beneficial or if the piggyback does not reflect good stewardship of public funds. Once the piggyback has been reviewed, the Department can initiate the item for electronic approval.

The Purchasing Division may bid and award the purchase of any product or service with the stipulation that any other government department may also purchase the awarded product or service at the same awarded price.

Cooperative Purchasing

It may prove advantageous for the City and other government agencies to combine resources and issue a joint cooperative solicitation. The Purchasing Division should be approached with any such suggestions and will coordinate with other government agencies to explore cooperative purchasing possibilities. All purchases more than \$25,000.00 require Council approval before entering into a contract.

Assignment and Assumptions

There are times when companies merge or are sold to another company. The rights to the City's contract are also transferred during the merger and acquisition process. A vendor must notify the City prior to the effective date of the assignment, and complete all the necessary paperwork. The City will generally honor the sale and assignment; however, failure to submit a timely notification to the City may result in a material breach of contract and termination by the City. It is imperative that the company submit a new W-9 to update the name, address and Taxpayer Identification Number and to communicate a clear assignment date.

Amendments and Change Orders

During the course of business, it may be necessary to make changes to a contract, agreement or Purchase Order. Such changes must be requested in writing and must clearly define the change and the reason for the change. These changes may be accomplished as follows:

- (1) *Unforeseen conditions allowance.* The City Manager, or designee, has the authority to approve expenditures up to the total amount of the allowance for unforeseen conditions as established upon award of the contract.
- (2) *Change orders by City Manager authority.* The City Manager, or designee, has the authority to approve change orders up to \$25,000.00 if an allowance is not included in the contract.
- (3) *Emergency event.* The City Manager, or designee, has the authority to approve and execute change orders that increase the contract price beyond the unforeseen conditions allowance only for an emergency event that occurs during the performance of the contract and requires immediate resolution to avoid one or more of the following: additional costs that were not reasonably anticipated; delay to the project that increases costs; or endangerment of the public. Each change order issued as a result of an emergency event shall be brought to City Council for ratification at the next available meeting, if the approval authority of the City Manager has been exceeded or if the allowance has been exceeded.
- (4) *Scope and time.* City Council approval is required for changes in project scope, defined as changes that materially alter or expand the original intent of the project, taking into consideration the details included in the advertisement

and previous award approval by council, if applicable. City council approval is required for changes in project time.

Except as expressly modified in a change order, all other terms and conditions of the modified contract remain in full force and effect.

The requesting department may submit change orders directly through the electronic financial system. A special note must be added explaining the change; i.e., addition of freight, additional line item, etc. A revised or supplementary quote may be required. The change order will flow through all levels of required approval. The following exceptions apply:

1. *End of the year roll-over:* at the end of the year agencies will be notified that change orders can no longer be processed through the financial system and must flow through the Purchasing Division.
2. *Retainage:* a purchase order holding retainage must be modified through the Purchasing Division.

CONTRACT ADMINISTRATION

Contract administration is the management of contracts between the City and a third-party. The contract management process begins after the award of the contract and aims to ensure that the third party is performing in accordance with the specifications/scope of work, terms and conditions, and other key elements of the contract. Key contract monitoring elements include receiving and inspection, reviewing invoices for accuracy and approving invoices for payment, resolving discrepancies, deficiencies or disputes, and monitoring performance. The Department Director will designate, in writing, a contract administrator for each active contract. All vendor noncompliance must be reported to the Purchasing Division and communicated in writing to the third party.

Unsatisfactory Vendor Performance

Departments should attempt to resolve vendor performance matters at the department level. These matters must be communicated to the vendor to allow the vendor an opportunity to rectify the situation. Departments should maintain written documentation, such as the nature of matter, person(s) contacted, dates, and conversation summaries. The Vendor Performance Review tool is available on the intranet to assist with documentation. If the matter cannot be resolved at the department level, the matter should be communicated to the Purchasing Division.

The Purchasing Division will review the documentation and make additional attempts to resolve the matter. If the matter cannot be resolved, the Purchasing Manager has the authority to take reasonable action against a vendor, including suspension and debarment.

Suspension and Debarment

Suspension and debarment matters are brought to the City Manager for approval. The City Manager consults with the City Attorney's office in deciding whether to suspend or debar a vendor.

Suspension is for a one year period or until a final determination with respect to debarment is made, whichever is earlier.

Debarment is enacted for no more than five years. However, if the vendor has been previously debarred by the City, subsequent debarment is permanent.

Causes for debarment - The causes for debarment include, but are not limited to, the following:

1. Conviction of a criminal offense related to a public or private contract or subcontract.
2. Conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty.
3. Conviction or civil judgment finding under antitrust statutes related to a submission of bids or proposals.
4. Determination that the contractor has violated the provisions of any local, state, or federal laws or regulations.
5. An act of fraud or misrepresentation in connection with a bid, quote, proposal, solicitation, or contract with the City or any other public entity, whether or not leading to a conviction.
6. Failure to fully comply with the terms and conditions or specifications of a solicitation or contract with the City or any other person or public entity, including, but not limited to the following:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a bid/contract;
 - b. Abandonment of a contract;
 - c. Failure to pay a contractor, sub-contractor, or material provider as required by Florida Statutes;
 - d. Repudiation of a bid/contract by failure to provide bonds, insurance, or other required certificates within a reasonable time;
 - e. Refusal to accept an addendum, agreement or contract, or to perform in accordance with the addendum, agreement or contract;
 - f. Overall performance of a contract has been evaluated as "poor" or "unsatisfactory";
7. A recent record of failure to perform or unsatisfactory performance in accordance with bids/contracts with the City or any other person or public entity. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor are not a basis for debarment.
8. Presence of principals or corporate officers, who were principals or corporate officers within another business at the time when the other business was

suspended or debarred under the provisions of this section or by another public entity.

9. Violation of any ethical standards set forth in local, state or federal law.
10. Any other cause or material factor which adversely affects the responsibility of a person or entity as a City contractor, including but not limited to suspension or debarment by another governmental entity for any of the causes listed in this section.

Notice of Intent to Debar - Upon a preliminary determination by the City Manager that cause exists for debarment, a contractor or prospective contractor shall be sent a written notice of intent to debar. The notice must state:

1. The reasons for the proposed debarment;
2. The proposed time period of the debarment;
3. Whether the person has been suspended pending finality of the debarment determination;
4. That suspended and/or debarred persons may not be considered for award or receive new contracts during the period of suspension and/or debarment;
5. That the preliminary finding of cause and proposed debarment action will become final, if a request for review is not timely filed in accordance with the following:

Request for review - A contractor or prospective contractor that has received a notice of intent to debar may request that the proposed debarment action be reviewed and reconsidered. The request must be received by the City Manager in writing, within ten (10) calendar days of the issuance of the notice of the intent to debar. The request for review and reconsideration must state the basis for review and reconsideration, and include such documents, evidence, and other information as the requesting party deems necessary to support its position. If no request for review and reconsideration is received within the time period allowed, the determination of the City Manager becomes final and all rights to request review or appeal are waived.

Review – If a written request for review is timely filed, the City Manager will review and reconsider the preliminary determination of cause for debarment. The City Manager has the option to hold a meeting or hearing with the party requesting review. During the review process, the City Manager may request information and speak with any individuals or entities regarding the debarment determination. The City Manager will provide a written decision on the request for review and reconsideration indicating the final debarment decision and action taken, if any, within thirty (30) calendar days following receipt of the request.

Appeal – The contractor must submit a written request of appeal within seven (7) calendar days from the date of the City Manager's written decision. An appeal may be scheduled for oral presentation before Council. The party and City Manager are each given ten (10) minutes to present the appeal and response, which may be extended by Council as necessary.

Final Decision - The decision of City Council is final.

Debarred and Suspended List - The Purchasing Division maintains a list of suspended and debarred vendors who are prohibited from responding to solicitations, receiving contracts or conducting business with the City during the period of suspension or debarment. Any bid or other response received from a vendor during the suspension or debarment period is disregarded.

Delivery, Inspection, Acceptance and Rejection

Delivery

The department should have a clear understanding of the shipping terms, maintain a copy of the purchase order or award document, and shall be responsible for ensuring the vendor complies with the shipping terms stated in the purchase order or contract.

Shipping and handling must be included in quote and bid prices. Unless otherwise specified, the City requests all goods be shipped F.O.B. Destination, with all shipping charges pre-paid by the vendor. F.O.B. Destination means that title passes when goods are received on site at the location as designated by the contract/PO. Pre-Paid means that all shipping charges are included in the quoted prices and the cost will pass to the City upon invoicing.

Inspection and Acceptance

Products and services should be inspected and accepted ("received") within a reasonable amount of time from the delivery or service date. The department should verify quantity, quality, and condition of the goods or services and match the items against the purchase order to verify the order was properly completed. If satisfied with the goods or services, the order can be "received". The department should document that the order has been received by signing, dating and writing "received" on the packing slip or invoice.

Timely and proper payment of invoices requires expedient review and acceptance of the delivery against the terms of the purchase order or contract.

Rejection

Deviations, damaged goods or unsatisfactory work should be documented and communicated to the vendor as soon as possible for correction. If the matter cannot be resolved at the department level, it should be communicated to the Purchasing Division. See Unsatisfactory Vendor Performance for additional information.

Invoices and Payment

It is the department's responsibility to request payment for goods or services received. The Finance Department does not process payments unless requested by a department.

Invoices

- Invoices must be date and time stamped upon receipt.
- Invoices must be thoroughly reviewed to ensure the bill is accurate, based on the goods and services received and the terms of the contract/PO. To help with review, an invoice should include:
 - PO number
 - Itemized listing of goods or services received
 - Prices
 - Quantities
 - All other charges (i.e. set-up charges, disposal, etc.) as specified in the PO
 - Delivery charges, listed separately from goods and services
- Once the invoice is reviewed, the department director or designee, must sign and date the invoice, indicating approval.
- Submit the invoice, current PO indicating the lines to be charged, and receiving document (packing slip or invoice marked as "received") to Finance for payment.
- Indicate "final" on the PO to signify that ordering is complete and to close the PO.

Vendors must provide appropriate backup documentation to support the invoice. For time and effort and construction contracts, it is essential that billed costs be analyzed (and challenged when appropriate) prior to approval for payment. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be supported with documentation as required in the contract (i.e., price list or vendor's cost).

Payments

The City's standard payment term is net 30, meaning, a check will be issued 30 days after receipt of an invoice. The City is subject to the Florida Prompt Payment Act, Florida Statute 218.74, which states that the payment due date for goods or services is forty-five (45) days after a proper invoice is received. If a proper invoice is not

received, payment is due forty-five (45) days after the goods are received or services are rendered. Vendors may assess a finance charge of 1% per month for payments not made within thirty (30) days after the due date; therefore, it is imperative that all invoices are paid as promptly as possible. If an invoice is not correct, it is the responsibility of the department to notify the vendor, preferably in writing, to eliminate the possibility of late fees.

In general, payments for goods or services take place upon the successful completion of a portion or completion of the work required. Depending on the complexity and variety of the goods and services, the contract may include one or more of the following types of payments: partial, progress, milestone, advance, withholding, and completion.

PROFESSIONAL SERVICES FOR DESIGN AND CONSTRUCTION

The City awards professional services for construction-related projects in accordance with the Consultants Competitive Negotiation Act (CCNA) as prescribed in Florida Statute 287.055. The CCNA governs the selection of professional firms based on qualifications for (1) design criteria packages and (2) design-build contracts.

Design Criteria Packages

A design criteria package is a concise performance oriented package of drawings and specifications of the public construction project. Its purpose is to furnish design/build firms with sufficient information to prepare a bid or response to the City's request for a proposal or to permit this City to enter into a negotiated design/build contract. It must specify performance-based criteria which include but are not limited to:

1. Legal description of the site
2. Survey information
3. Interior space requirements
4. Material quality standards
5. Schematic layouts and conceptual design criteria
6. Cost and budget estimates
7. Design and construction schedules
8. Site development requirements
9. Provisions for utilities, storm water retention and disposal
10. Insurance Certificate with all required coverage

Selection Committee - The City will appoint a Professional Services Selection Committee that will be responsible for evaluating proposals received pursuant to an RFP as follows:

1. The Department Director is responsible for identifying a minimum of three members to serve on the Committee who are sufficiently qualified to evaluate the technical qualifications of the proposals.

2. A member of the Council appointed by the Chairman is optional.
3. The City Manager or designee may alter the makeup of the Committee.
4. The Purchasing Manager or designee is responsible for overseeing the Committee and assuming the duties and responsibilities for administrative processes and procedures concerning the Committee and its deliberations.

Committee Meetings and Minutes - Committee meetings must be noticed and advertised. Minutes must be kept of all such meetings.

Selection Process - The City must use a competitive selection process to evaluate and rank proposals. Price cannot be included as an evaluation criteria in the RFP. The Committee shall select in order of preference no fewer than three firms (if available) deemed to be the most highly qualified to perform the required services for recommendation to Council. (See Evaluation Criteria in this section)

Competitive Negotiation – Once Council has approved the firm and authorized the negotiation of a contract, the Purchasing Division must establish a negotiation committee to negotiate the terms of compensation, consistent with the CCNA requirements. In an effort to expedite the process, negotiations can be done prior to Council approval; however, it should be made clear to the firms that the contract is contingent on Council approval.

Single projects - Terms should include the fee schedule, proposal for scope of work, and compensation. The compensation may be stated as a "lump sum" or a "not to exceed" amount.

Continuing contracts - A fee schedule will be negotiated which will subsequently be used by the firm to establish either "not to exceed" or "lump sum" proposals for the City as projects arise. (See the Continuing Contract section)

The Legal Department is responsible for preparing the single project contract or the continuing contract(s), as applicable, for the appropriate signatures and, the Department prepares an agenda item for contract execution. Once executed, the Department can create a requisition for the total amount of a single project contract. For continuing contracts, a blanket PO can be created for the amount planned to be expended in the current fiscal year or a PO can be created on an as-needed basis.

Continuing Contracts - A continuing service agreement (CSA) is only used when estimated construction costs of each individual project under the Master Agreement does not exceed \$2,000,000; for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000; or for work of a specified nature as outlined in the contract required by the City, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

If multiple continuing contracts exist for the same professional service, a logical method for workload distribution must be utilized in order to fairly distribute the projects.

All contracts greater than \$25,000 are sent to the City Manager for a determination of whether the design should be done under an existing CSA or if a new RFP should be issued to select a consultant.

Evaluation Criteria and Selection - To select a Consultant that has an existing Continuing Service Contract with the City, the Department must first verify that the proposed project is consistent with the scope of services in the original RFP from which the Consultants were selected. If the continuing contract can be used, the following procedures should be followed and documented:

1. Review the current list of vendors on continuing contract for the service needed and determine whether any of the consultants have the expertise, experience, and personnel required for the proposed project such as:
 - a. The professional engineer that will be assigned to the project
 - b. The location of key personnel that will work on the project
 - c. For projects with multiple phases, whether a particular consultant has performed previous phases or significant portions of the project which would result in a significant benefit to the City. Special needs of the proposed scope of work should be addressed during this review.
 - d. Consideration may be given to subconsultants.
2. For the consultants that meet or exceed the criteria, review past project performance.
3. Of those with overall satisfactory past performance, review the total amount of money the City has contracted with each of the consultants selected during the last 24-month period (a spending report can be obtained from the Purchasing Division).
4. Select the consultant(s) with the lowest dollar volume in an effort to equitably distribute work among the consultants.
5. This process should not violate the principle of selection of the most highly qualified consultant for the project and proposed scope of work.
6. Consideration of other qualifying factors for the specific scope of work should be as follows:

Once a consultant is selected, the Department should review the fee proposal and be able to support that the proposal is fair and reasonable for the services to be provided. Such representations and support should come from a staff member who has the experience and/or expertise to analyze the consultants' proposals.

Design-Build Projects

A design-build project combines the design and construction of a public construction project into a single contract to be performed by one firm. The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by the City. If the City elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional must be selected and contracted in accordance with the design criteria packages above. The design criteria professional preparing the package is not eligible to render services under

the design-build contract. During the selection of the design-build firm, the City must employ or retain a licensed design professional suitable for the project to serve as the City's representative.

The design-build selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.
5. Consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the City of the detailed working drawings of the project; and evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

In the case of public emergencies, the City Manager may declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

Public Announcement

The Purchasing Manager will publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project, the basic construction cost or for a planning or study activity when the fee for professional services exceeds the threshold amounts provided in Section 287.017, Florida Statutes. Except in cases of valid public emergencies certified by the City Manager or designee. The public notice will include a general description of the project and will indicate how interested consultants may apply for consideration.

Reuse of Existing Plans

There is no public notice requirement or utilization of the selection process for projects in which the City is able to reuse existing plans from a prior project. Public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of Florida Statute 287.055.

Qualification Procedures

Any firm or individual desiring to provide professional services to the City must first be certified by the City as qualified pursuant to law and the regulations of the City. The City must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past performance record and experience of the firm or individual.

CONSTRUCTION PROJECTS

Construction projects are requested through the Purchasing Division. Large construction projects are competitively bid and contracted to a firm which is authorized to manage the construction project on behalf of the City. Once the procurement process is complete, the following additional procedures apply:

1. The using department issues the Notice to Proceed to the Contractor.
2. Throughout the course of the contract, Purchasing and the using department work closely together to monitor the contracting firm's service activity. The contracting firm reports and functions under the direction of the Department with assistance from other individuals with specific expertise as required (i.e., engineering reviews from Engineering/Construction, etc.)
3. Monthly payment requests shall be prepared by the contracting firm and submitted with supporting documentation to the City for review by the project manager. Upon approval by the project manager, the invoice is submitted to Finance for payment processing.
4. The contracting firm will submit all change order requests to the City, on its company letterhead, in the form of a price proposal. The department and the project manager will review the price proposal and submit it to the Purchasing Division, who will forward it to the legal department for the contract amendment. The amendment must be approved by the Department Director, the City Manager, and Council, in accordance with the signature authority level. Upon execution of the amendment by the City, the Purchasing Division will modify the purchase order to adjust the funding.
5. The Certificate of Substantial Completion will be submitted by the project manager and/or outside consultant/designer, as applicable, with concurrence of the using department.
6. The Certificate of Final Completion of the project and final payment will be submitted by the project manager and/or outside consultant/designer, as applicable, with concurrence of the using department.
7. A pay application (invoice) should be submitted, reviewed and approved by the project manager for work completed as of September 30, for proper accruing purposes and using department and sent to Finance for processing.
8. The final payment must be reviewed and approved by the project manager and using department and sent to Finance for processing.

Bid Disclosure Act

The City complies with the “Public Bid Disclosure Act” created by Ch. 93-76, Laws of Florida, which states that a local government entity must disclose in its bid documents all permits or fees payable by a contractor to the local government for a specific project. The City issues the following information to inform potential bidders of the fees and permits for construction projects:

1. Since the contractor must be a registered contractor in the State of Florida and have a valid Occupational License from either Volusia County or a local government entity located therein, only a registration or renewal fee with the City of Port Orange is required.
2. All building and inspection permits associated with City construction projects will be required; however, all related fees for these permits will be waived.
3. Impact fees or non-building permits fees associated with City Projects will be paid by the City to other governmental agencies (i.e.: St. Johns Water Management City, Volusia County). These fees are applied for and paid for by the City prior to the commencement of the project. The contractor is not responsible for payment of these fees (see no. 4 below). The permits will be given to the contractor upon their issuance and receipt, if not already distributed at the pre-construction meeting.
4. City Utility Related Charges: The contractor will not be required to pay water, sewer or recreation impact fees, connection fees, tapping charges or security deposits normally associated with the installation of water, sewer or reclaimed water service. The contractor is required to pay for monthly/consumption related charges for water, sewer, garbage collection, storm water management or reclaimed water that may accrue during construction. All costs associated with hydrant meter rental and deposit charges will also be charged to the contractor. It is the contractor’s responsibility to contact the Port Orange Utility Department to determine these charges prior to submitting a bid.
5. All testing as required by construction contract specifications (i.e. soil testing, etc.) will be obtained and paid for by the contractor.

SPECIALIZED PURCHASES

Real Estate Transactions and Services

There are several types of real estate transactions and services. Each is handled in a manner governed by the Florida Statutes and City Ordinance Sec. 2-274. All requests for the purchase of real estate are processed through the City Legal Department.

All appraisals, offers and counter-offers to acquire real property must be documented in writing. These transactions are exempt from public disclosure and inspection until an option contract is executed or until thirty (30) days before a contract for purchase is

considered for approval by Council. If the contract is not considered by Council, the exemption expires thirty (30) days after negotiations are terminated.

Property Appraisals

The City must obtain at least one appraisal for properties costing less than \$500,000 and at least two appraisals for properties exceeding \$500,000. If the agreed upon purchase price exceeds 15 percent of the sole appraisal or exceeds the average of the two appraisals, Council is required to approve the purchase by a two-thirds vote. The governing body may, by majority vote of the Council members present, exempt a purchase in an amount of \$100,000.00 or less from the requirement of an appraisal.

When the City acquires funding in whole or in part from another governmental entity for the purchase of real property, the City may piggyback the appraisal procedures of the other governmental entity.

Appraisals for property not considered road right-of-way should begin with the County Property Appraiser's office and appraisals for right-of-way property should begin with the Right-of-Way Agent.

The Council, by majority vote, may disclose the appraisals, offers and counter-offers of the property acquisition. If Council has voted to disclose the records, the purchase and property owner records will be open to inspection and reproduction until the termination of negotiations.

Leased Space

Requests for space to be leased for office, storage, warehouse, or any other use shall begin with the Right-of-way Agent.

The following process shall be utilized to procure Lease or Rental type contracts (of private/commercial property) for use by the City:

1. The using department shall determine that there is a requirement to lease private/commercial space.
2. The City Manager and/or City Council (upon request submitted by the using department) will approve or deny the request. The City Manager is authorized to approve a one-year lease within the appropriate signature level. City Council must approve multiple year leases and those above \$25,000.
3. The using department must locate potentially adequate private/commercial facilities.
4. The using department must negotiate the lease/rental rate, services, facilities, etc.
5. The using department shall request the lease/rental contract and submit it to the Legal Department for review.
6. The using department shall prepare the Council agenda item for approval of lease and commitment of funds.
7. The using department shall distribute the executed contract documents.

8. The using department must submit the PO for the reoccurring lease/rent payments.
9. The using department shall monitor the lease during its term for notices, renewals and/or termination.

Technology Purchases

Requests for certain technology purchases are reviewed by the Information Technology (IT) Department and may be affected by standardization procedures. These include, but are not limited to, requests to purchase telephone equipment and/or services; computer equipment and/or services; software; communication equipment and/or services; and other technological equipment and/or services. Requests for IT goods and services are reviewed on a case-by-case basis by IT and the Purchasing Division to determine the appropriate purchasing process. IT purchases should not be made using a p-card.

Vehicles

Requests for vehicles - automobiles, trucks, fire trucks, buses, heavy construction type equipment, etc. – must be coordinated through the Purchasing Division. Vehicles are purchased using many methods, including public auction, sealed bids, and various other term contracts. There is a longer lead-time for vehicles due to production schedules, auction dates, and custom ordering. Adequate planning and early requests are essential to minimize delays when procuring transportation equipment.

Surplus Property

The Purchasing Manager has the authority to obtain property from authorized suppliers, such as other government agencies. Surplus property obtained from Federal, State and local agencies is governed by specific laws, rules and regulations. Surplus property acquisitions should be coordinated with the Purchasing Division.

Purchase of Capital Equipment

The City Manager or designee must approve capital equipment listed in the capital budget approved by City Council if the final cost per item does not exceed the approved budget cost by more than a total dollar value of \$25,000.00. Purchases more than \$25,000.00 require Council approval.

State and Federally Funded Purchases

Granting agencies often impose additional purchasing regulations that are more restrictive than the City's. Purchases using Federal funds require specific procedures before purchases can be made. It is the responsibility of the requesting department to identify and communicate any special purchasing requirements to the Purchasing Division. The Purchasing Division will then ensure that the requirements are followed.

The City has additional procedures for federally funded projects as follows:

1. Local preference for bidders is not permitted.
2. Solicitations must be advertised for a minimum of three weeks.
3. Bids received must be read aloud or, if not read aloud, should have the name of the bidder and the reason for not reading the bid aloud, publicly announced.
4. The City will utilize 23 CFR 635 for guidance in determining if a bid is unbalanced and for guaranty and warranty guidance.
5. When establishing a contract time for federally funded projects, the City will utilize the guidelines established by the FDOT.
6. Requests for qualifications for federally funded projects must include reference to the requirements of the United States Code (U.S.C) Title 40, Chapter 11, Section 1101-1104 Selecting Architects and Engineers (Brooks Act).
7. 2 CFR 200 – Uniform Guidance for Federal Regulations is used for purchasing process requirements.

RESEARCH AND DEVELOPMENT, TRIALS AND DEMONSTRATIONS

Research and Development

Occasionally, specifications are not readily definable or there are many specifications that may meet the department's needs. A department may know what needs to be accomplished, but may not know which product or service best meets that goal. To more closely define the specifications, the department may "test" several products or services to determine which option best suits the needs of the department. The process of testing goods and services is called Research and Development (R & D).

The Purchasing Division will coordinate with the department and one or more vendors to obtain various goods and services at no cost to the City. The goods and services are usually loaned to the City on a temporary basis and must be returned after the trial period has ended. The Purchasing Division and the department create a project team. The team works together to create evaluation criteria to assess the goods or services. The project team is required to document the results. The results will help the department clearly define the specifications. Once the specifications are defined, the procurement process can begin following regular City purchasing regulations. R & D projects are determined on a case-by-case basis.

Trials

Trials are similar to R & D projects, but are used when the department knows the product or service that it is interested in trying. The department can request a “trial purchase” whereby a single item or limited quantity is obtained for a short trial period. The goods or services may be provided free of charge, but are not required to be free. Purchasing requirements still apply; however, the Purchasing Division may waive some requirements for an approved trial project. A purchase order is required before items or services are ordered. Products or services ordered for trial without a purchase order are considered unauthorized purchases. Each project is determined on a case-by-case basis.

Demonstrations

A product demonstration (or "demo" for short) is a promotion where a product is demonstrated to potential customers. The goal is to introduce customers to the product in hopes of getting them to purchase the item. To prevent the appearance of impropriety, vendors and departments should coordinate all product demonstrations through the Purchasing Division.

Surveys/Testimonials/References

City employees should use professional judgement in completing surveys, providing testimonials or acting as a reference for a vendor. The Purchasing Division, City Manager or Attorney should be contacted for guidance on these matters.

Use of City Logo/Trademark

The City owns and retains all proprietary rights to its logos, trademarks, trade names, and copyrighted images (“Intellectual Property”) and does not allow solicitation respondents to use such intellectual property. Unauthorized use of the City’s intellectual property may constitute a trademark and/or copyright infringement in violation of federal and state laws and should be communicated to the Legal Department.

REVENUE PROCEDURES

Revenue-generating transactions follow the same purchasing guidelines and solicitation requirements used for the purchase of goods or services. Revenue-generating transactions include sales, commissions, leases, licensing services, copyrights, or other intangible assets. Solicitations that include a revenue activity must include audit procedures which have been reviewed by the Finance Department. Contact the Purchasing Division for further information and instructions as most of these transactions are unique and must be handled on a case-by-case basis.

Disposing of Surplus Property

The City maintains its assets until they become obsolete or unusable and are deemed surplus. Assets no longer needed by a department should be offered to other City departments prior to disposition. Assets can be disposed of in the following methods:

- Sold by formal solicitation
- Sold at auction
- Sold through negotiation
- Traded-in for the purchase of another asset
- Donated to a not-for-profit or government agency
- Scrapped/junked if disposition costs exceed the value
- Other procedure approved by the City Manager

Dispositions less than \$25,000.00 are approved by the City Manager. Compliance with formal solicitation requirements is required if the anticipated revenue is greater than \$25,000. Notice of the sale must be posted in City Hall.

The City Manager, or designee, is authorized to execute title transfers, bills of sale or other documents necessary to convey and transfer.

Auction Process

- 1) The department submits an auction request to the Purchasing Division including the following information:
 - a. Description
 - b. Make and model number
 - c. Year of manufacture
 - d. Quantity
 - e. Measurements
 - f. General use
 - g. Estimated value
 - h. Pictures
 - i. Serial number
 - j. Fixed asset control number
- 2) If necessary, the department must obtain quotes for the sale.
- 3) The City Manager approves the inventory list of surplus assets.
- 4) The Purchasing Division distributes the inventory list to departments so that they may claim listed assets, if desired.
- 5) The departments complete disposition forms for its respective assets on the inventory list and send the forms to the Fixed Asset Accountant in Finance for review and removal.
- 6) The assets are listed for sale by the Purchasing Division. The Purchasing Division must coordinate the payment process with Finance for a proper accounting.
- 7) The department will coordinate the pickup with the high bidder.

DEFINITIONS

For the purposes of this Procedures Manual, the following terms, phrases and words have the meaning given herein.

Advertisement - A formal announcement of a solicitation, usually placed in a newspaper or on the Internet.

Agency – A local, state or federal governmental organization.

Appropriateness - The purchase should clearly serve a City function.

Bid - Any offer specifically given to the City in response to any solicitation.

Bond - A binding agreement and/or sum of money of financial collateral put up for security to guarantee the performance by a contractor of certain duties and obligations. A Bid Bond guarantees the bidder/proposer will enter into a contractual relationship with the City within a specified time after award of a contract. A Performance Bond guarantees the contractor will faithfully and timely complete the contract. A Payment or Materials Bond guarantees the contractor will pay all subcontractors and material suppliers. A Fidelity Bond guarantees repayment or replacement due to dishonesty or negligence destroyed by a contractor's employees or agent.

Business - Any corporation, partnership, individual, sole proprietorship, joint venture, joint stock company, or any other legal entity engaged in the commercial provision of commodities, services or labor.

Change Order - Any written modification to a contract or purchase order.

Commodity - Various supplies, goods, merchandise, equipment and other personal property.

Construction - The process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements including roadways, utilities, and facility site work.

Consultant - Professionals who are considered to have education, specialized knowledge, experience or abilities not generally available within City government. This includes but is not limited to: accountants, actuaries, appraisers, architects, artists, auditors, counselors, designers, economists, educators, engineers, financial analysts, lobbyists, management and systems analysts, medical practitioners, planners, promoters, researchers, scientists, sociologists, surveyors, trainers, and other professionals.

Contract - Any type of City agreement, regardless of what it may be called, for the purchasing, lease, or sale of commodities, services, real property, or the disposal of assets.

Contract/Real Estate Related – An agreement to obtain the professional services of attorneys (to include paralegals and expert witnesses including appraisers) for the acquisition by purchase or lease/rent of real estate or the lease or rental of property for use by the City.

Contract/Technical/Consulting Services – An agreement to obtain the professional services of architects, engineers, land surveyors, artists, construction contractors, construction managers, maintenance contractors and any other technically related service providers.

Contractor - Any business or vendor that contracts to perform work or services or provides commodities to the City.

City - The City of Port Orange, Florida.

City Council - The legislative body of the City of Port Orange, Florida.

City Manager - The Chief Executive Officer of the City of Port Orange, or designee.

Department - Any Department, Division, or other unit in the City government that procures commodities, construction, or services.

Department Director - Any Department Head, the City Manager, the City Attorney, the Chief Operating Officer, the Chief Financial Officer, and any appointed Department Director, or successor titles.

Dollar Value – The maximum amount for a purchase that is authorized to be made by the designated City officials and the initial value shall be adjusted on October 1 of each year if the Weighted Five Year Average increases.

Emergency - Any condition that may affect the health, safety, and welfare of the citizens of City of Port Orange, or one that stops or seriously impairs a necessary function of City government.

Fixed Asset - Any commodity that has a useful life of more than one year and a unit cost of one thousand dollars (\$5,000.00) or more.

F.O.B (Free on Board) - A legal term that determines where title passes from seller to buyer and who usually pays freight costs.

Formal Solicitation - A written solicitation that requires Council approval.

Grant - A contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

GSA (General Services Administration) - A federal government department that is responsible for the purchasing of most of the Federal Government Agencies.

Indefinite Quantity Contract (IOC) - Same as Master Agreement.

Invitation to Negotiate (ITN) - A written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the purchasing of commodities or contractual services.

Irregularity - Any change or omission in a response that does not have an adverse effect on the City's best interests, and does not affect the outcome of the source selection process by giving an offeror an advantage or benefit not enjoyed by any other offeror, and not inconsistent with applicable laws.

Master Agreement - A nonexclusive, indefinite quantity agreement. It is a tool to facilitate purchases when the exact quantity of a required commodity or service is unknown or may vary depending upon the using department's requirements. It may also be called a Price Schedule contract, Requirements contract, or Term contract

MRO - Maintenance, Repair, Operations supplies. Supplies used in daily operations.

Offer - Any bid, proposal or quotation made to the City.

Offeror - Any business submitting an offer to the City.

Piggyback - Purchasing a product or service in accordance with a contract awarded by another political agency.

Price Schedule - Same as Master Agreement.

Procurement - For this manual, it means the same as Purchasing.

Procurement Card - Same as Purchasing Card.

Professional Services - Technical, and/or unique functions performed by independent contractors whose business is the rendering of such services. This includes accountants, appraisers, attorneys, auditors, medicine and the medical arts, architects, engineers, surveyors, management and systems consultants, research, the arts and other professionals.

Proposal - Any offer specifically given to the City in response to a Request for Negotiation, Request for Statement of Qualifications or a Request for Proposals.

Purchasing/Procurement - Includes purchasing, buying, renting, leasing, bartering, or otherwise acquiring any commodity or service or construction. It also includes all functions that pertain to obtaining any commodity or service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration, and disposal of surplus.

Purchasing Card - The VISA card issued by the City for small non-recurring purchases.

Purchasing Manager - The Purchasing Manager of the City of Port Orange, or designee.

Pyramiding - Subdividing an order to circumvent the Purchasing Ordinance, Policies and Procedures.

Quote, Quotation - A statement of price, terms of sale, and description of commodities or services offered by a seller to the City.

Recurring Purchase - Two or more purchases/charges when the user has reason to believe additional purchases/charges would be incurred by the City within the next twelve months.

Respondent - A business that responds to a solicitation.

Responsible - Having the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having a record of timely and acceptable past performance that will assure good faith performance,

Responsive - Substantially conforming with all material respects to the requirements and criteria set forth in the invitation.

Request for Proposal (RFP) - A solicitation to provide a proposal (offer) to the City. It is usually awarded on basis other than just price.

Request for Statements of Qualifications (RFSQ) - An invitation process used to select a contractor based upon the apparent qualifications submitted by the respondent.

Selection Committee - Any committee that has been delegated decision-making functions, directly or indirectly, by the City Council.

Service - The furnishing of labor, time, or effort by a contractor. This includes all construction.

Single/Sole Source - There is only one source for the purchase.

Solicitation - Includes all documents, regardless of the media, whether attached or incorporated by reference, used for inviting offers.

Specification - Any description of the physical or functional characteristics, or of the nature of the supply or service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Statement of Work (SOW) - The requirements that the offeror must complete for a contract. The requirements component of a Request for Negotiation, Request for Statement of Qualifications, or a Request for Proposal.

Supplies - All property, including but not limited to: equipment, materials, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus Property - Any tangible personal property or real property in excess of the needs of the City and not required for its foreseeable need.

Task Assignment - A specific job tied to a larger contract with established terms and conditions.

Unauthorized Purchase - Any purchase, order, or Contract that is made by any City employee or official outside of the purview of the City of Port Orange Purchasing Ordinance, and/or the Purchasing Policy & Procedures.

Vendor - Any business firm that will be or has been awarded a contract by the City. A seller.

DIVISION 2. - PURCHASE AND SALE PROCEDURE

Sec. 2-256. - Establishment of purchasing division.

There is hereby established a purchasing division in the finance department of the city.

(Code 1981, § 8-20)

Sec. 2-257. - Purchasing agent.

- (a) *Position established.* There is hereby established the position of purchasing agent, who shall be the supervisor of the purchasing division and perform all duties required by law and such other duties as assigned by the finance director, and shall have the authority and duties prescribed by this article.
- (b) *Purchasing authority.* The purchasing agent shall have the authority, and it shall be his duty, to execute the duties herein specified in connection with the purchase contract for all supplies and contractual services needed by any department or agency of the city when duly authorized, in accordance with purchasing procedures as prescribed in this article, and such rules and regulations as may be adopted for the internal management and operation of the purchasing division, and such other rules and regulations as shall be prescribed by the city manager.
- (c) *Public improvement contracts.* The awarding of contracts involving public construction and improvements are not under the jurisdiction of the purchasing division. All such contracts must be authorized by the city council.
- (d) *Unauthorized purchases.* Except as herein provided it shall be prohibited for any city employee or other person to order the purchase of contractual services, or any materials or supplies within the purview of this article other than through the purchasing division, and the city shall not be bound by any purchase or contract made contrary to the provisions herein.
- (e) *Other duties and obligations.* In addition to any other duties conferred by this article, the purchasing agent shall:
 - (1) Act to procure for the city the highest quality in supplies and contractual services at the least expense to the city from qualified and responsible suppliers.
 - (2) Endeavor to obtain as full and open competition as possible on all purchases and sales.
 - (3) Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the city the benefits of research conducted in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses or organizations.
 - (4) Prescribe and maintain a standard purchasing manual for all using departments.
 - (5) Prescribe and maintain such forms as he shall find reasonably necessary to the operation of this article.

(6) Explore the possibilities of buying in "bulk" so as to take full advantage of discounts.

(7) Act so as to procure for the city all tax exemptions to which it is entitled.

(Code 1981, § 8-21)

Sec. 2-258. - Requisitions and estimates.

All using departments, either by or with the authorization of the head of the department under which the using department operates, shall file with the purchasing agent detailed requisitions or estimates of their requirements in supplies and contractual services in such manner, at such times, and for such future period as the purchasing agent shall prescribe.

(Code 1981, § 8-22)

Sec. 2-259. - Conflicts of interest.

No employee of the city shall contract with or for any business dealing with the city whereby he may derive income or benefits other than those provided as remuneration from the city for his employment except when the city council has made a prior determination that such dealings are in the best interest of the city.

(Code 1981, § 8-23)

Sec. 2-260. - Encumbrance of funds.

Except in cases of emergency or under special circumstances as authorized by the finance director, the purchasing agent shall not issue any order for delivery on a contract or open market purchase until the finance director has certified, after pre-audit, that there is to the credit of using department concerned a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the amount of such order.

(Code 1981, § 8-24)

Sec. 2-261. - Petty cash funds; authorization and procedures.

- (a) Each department may establish a petty cash fund not exceeding an operating amount of \$500.00. The finance director shall, with the concurrence of the city manager, establish appropriate and reasonable operating amounts for such funds within the limit set forth above and establish written procedures for the operation and accounting for such funds within acceptable accounting practices.
- (b) VISA purchasing cards may be issued to specific identified employees within the departments to purchase small dollar items that do not exceed a single purchase of \$500.00 as set forth in the city's purchasing card policies and procedures. The monthly maximum purchase for any single card holder

may not exceed \$5,000.00 unless otherwise modified and approved by the city manager for an amount not to exceed \$25,000.00.

(Code 1981, § 8-25; Ord. No. 1997-22, § 1, 5-6-97; Ord. No. 2004-15, § 1, 7-20-04)

Sec. 2-262. - Purchase and sales procedures.

- (a) All supplies, equipment and contractual services, except as otherwise provided herein, when the estimated purchase price thereof shall exceed \$25,000.00, shall be purchased from the bidder determined by the city council to be the lowest and best responsible bidder pursuant to the formal bidding procedure.
- (b) No contract or purchase shall be subdivided to avoid the requirements of this article. Separate purchases from the same vendor by different departments for different purposes shall not be considered subdivided purchases. Such purchases will be reported to the city council on a quarterly basis or as soon as practicable, and will follow the bidding guidelines outlined in the City of Port Orange Purchasing Manual Policies and Procedures, to ensure cost efficiency and maximize competition.
- (c) Items with a purchase price of more than \$2,500.00 but less than \$5,000.00 shall be made using verbal quotations. Items with a purchase price of more than \$5,000.00 but less than \$25,000.00 shall be made with three quotations confirmed in writing.
- (d) All sales of personal property (except trade-in personal property) which has become obsolete or unusable or the sale of which is otherwise determined to be in the best interest of the city, when the estimated value exceeds \$25,000.00, shall be made to the highest responsible bidder pursuant to the formal bidding procedure of this article. Acceptance or rejection of bids for such sales shall be made by the city council. The city council may, by appropriate resolution, authorize the city manager or other city official to execute any and all title transfers, bills of sale or other documents necessary to convey and transfer such property to the successful bidder. In the absence of such authorization by resolution, the mayor and city clerk may execute such instruments.
- (e) All sales of personal property (except trade-in personal property) which has become obsolete or unusable or the sale of which is otherwise determined to be in the best interest of the city, when the estimated value is \$25,000.00 or less, may be sold upon the written approval of the city manager. Notice of such sale shall be posted in city hall and, insofar as is practicable and reasonable, written and sealed bids should be solicited. Notwithstanding the foregoing, such property may be sold by negotiated sale, auction or other procedure approved by the city manager. Formal advertising or compliance with the formal bidding procedure shall not be required. The city manager, or such person as he shall designate in writing, is authorized to execute any and all title transfers, bills of sale or other documents necessary to convey and transfer such property to the purchaser thereof.
- (f) Junk/non-real property. The city manager may declare that any non-real property that is determined by the city manager to have reached the end of its useful life and/or may expose the city to potential liability from its continued use or sale and/or whose disposition cost exceeds its value is junk. Non-real

property declared by the city manager to be junk shall be disposed of without receipt of consideration (or, if necessary, at a cost to the city) and shall be rendered useless and not be donated.

(Code 1981, § 8-26; Ord. No. 1997-22, § 2, 5-6-1997; Ord. No. 2004-15, § 2, 7-20-2004; Ord. No 2015-16, § 1, 5-19-2015; Ord. No. 2015-27, § 1, 8-18-2015)

Sec. 2-263. - Bidding procedure.

For all purchases and sales requiring invitation for bids, the following procedure shall be followed:

(1) *Notice inviting bids:*

- a. *Newspaper.* Notice inviting bids shall be published once in at least one newspaper published in the county, and having general distribution in the city, at least 12 days preceding the last day set for the receipt of bids.
- b. *Contents of notice.* The newspaper notice required herein shall include a general description of the articles to be purchased or sold or the contractual services desired, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.
- c. *Private solicitation of bids.* The purchasing agent may solicit either oral or written bids or quotations for open market pricing or sale, but shall use all reasonably available and current bidders' lists. All oral bids or quotations in excess of \$5,000.00 shall be confirmed in writing.
- d. *Prebid conference.* A prebid conference will be held whenever practicable.

(2) *Sealed bids.* Bids shall be required to be submitted to the purchasing agent in a sealed envelope, the outside of which shall be clearly labeled to show that it contains a bid.

(3) *Opening.* Bids shall be opened in public at the time and place stated in the notices.

(4) *Tabulation.* A tabulation of all bids received shall be made and shall be available for public inspection.

(Code 1981, § 8-27; Ord. No. 1997-22, § 3, 5-6-1997; Ord. No. 2004-15, § 3, 7-20-2004; Ord. No. 2006-35, § 1, 9-19-2006)

Sec. 2-264. - Rejecting of bids, rebidding.

The city council shall have the authority to reject any and all bids. If the lowest and best bid exceeds the budgeted amount and the city council does not make additional funds available, the purchasing agent with the help of the department head shall have the authority to readvertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available.

(Code 1981, § 8-28)

Sec. 2-265. - Waiver of irregularities.

The city council grants the city manager the authority to waive any and all nonsubstantial or minor irregularities in any and all formal bids. Any waiver will be noted in any award recommendation to [the] council.

(Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

Sec. 2-266. - Determination of lowest and best bidder.

In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

(Code 1981, § 8-30)

Sec. 2-267. - Bidding requirements.

- (a) [*Procurement of goods and services.*] The city manager shall be responsible for the procurement of supplies, materials, equipment and services paid for from city funds. The departments and/or offices shall purchase their goods and services through the division of purchasing, which is the city's official purchasing agency. All purchases shall comply with local, state and federal laws, rules regulations and policies, as applicable. No contract or purchase shall be subdivided to avoid the requirements of this article.
- (b)

[Exempt purchases.] Purchases exceeding \$25,000.00 require approval by city council except for goods and/or services that do not lend themselves to the normal competitive bidding process and the city manager has approved waiving the formal bidding requirements, as follows:

- (1) Maintenance and/or service contracts, on various types of technical equipment that are offered and/or supplied only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental, lease or lease purchase agreement's terms and conditions.
- (2) Materials purchased directly from a producer or publisher, an owner of a copyright, an exclusive agent with the state, a governmental agency or a recognized educational institution.
- (3) Public or regulated utility services or government franchised services.
- (4) Commodities or contractual services determined to only be available from a single source. The city shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of a least seven business days. The posted description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described.
- (5) Professional services (except as otherwise provided for in Florida law) and contracts for professional services (which include, but are not limited to, services provided by attorneys, accountants, actuaries, lobbyists and financial advisors) may be made or entered into by the city manager without utilizing a sealed competitive method or the written quotations method.
- (6) Admission fees.
- (7) Association fees and professional association dues.
- (8) License fees and agreements.
- (9) Media advertising (i.e., newspaper, radio, television, etc.).
- (10) Permit fees.
- (11) Petty cash replenishment.
- (12) Postage.
- (13) Registration fees.
- (14) State fees (unemployment compensation).
- (15) Travel reimbursement.
- (16) Insurance coverage or claims expenditures as provided in the insurance fund, excepting, however, damage to city-owned property.
- (17) Supplies, equipment and vehicles purchased at a public auction.
- (18) Purchases from other governmental agencies, including school boards, community colleges, federal agencies, and agencies from other states, when the awarded contract by the other entity permits purchases by the city on the same terms, conditions, and prices (or below such prices) and the purchase is considered economically advantageous to the city.

- (19) Purchase, sale, lease or rental of real property.
 - (20) Items for resale when purchased in compliance with the restrictions listed below:
 - a. Items purchased shall be exclusively for resale;
 - b. Items shall include brand name specifications significant to their retail sales appeal; and
 - c. Items, after reasonable expected resale, shall result in no cost to the city.
 - (c) *Contract renewals.* The city shall have the authority to award and reject any or all bids. The city manager shall have the authority to exercise, in subsequent years, any renewal options initially included in the bid solicitation, provided they are approved by council at the initial award of the contract, and the terms and conditions as well as current market conditions are favorable for the city. Such renewals are subject to the availability of funds.
 - (d) *Identical prices and priorities for award.* When identical prices are received from two or more vendors and all other factors are equal, priority for award shall be given to vendors in the following sequence:
 - (1) Drug-free workplace pursuant to F.S. § 287.087.
 - (2) Certified service-disabled veteran.
 - (3) Local businesses as defined in section 2-275 of the Code of Ordinances.
 - (4) Firm with the lowest volume of work on city projects within the last five years. The information will be based on information provided by the proposer, subject to verification at the city's option.
- (Code 1981, § 8-32; Ord. No. 1997-22, § 4, 5-6-1997; Ord. No. 2001-86, § 1, 11-13-2001; Ord. No. 2015-18, § 1, 6-2-2015; Ord. No. 2015-47, § 1, 1-5-2016)

Editor's note— Ord. No. 2015-18, § 1, adopted June 2, 2015, amended § 2-267 in its entirety to read as herein set out, including retitling the catchline from "Waiver of bidding requirements" to "Bidding requirements." Unnumbered paragraphs have been lettered and numbered, at the editor's discretion, according to the Code's style, for the purpose of clarity.

Sec. 2-268. - Cooperative purchasing.

The city manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the city would be served thereby, provided the same is in accordance with all applicable laws. If the city manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of \$25,000.00 would require council approval before the purchasing contracts are entered into.

(Code 1981, § 8-33; Ord. No. 1997-22, § 5, 5-6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

Sec. 2-269. - Performance and payment bonds.

A contractor or vendor may be required to provide a corporate surety bond from a surety company authorized to do business in Florida to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as are deemed necessary by the city manager. All such bonds shall be approved as to form by the city attorney.

(Code 1981, § 8-34)

Sec. 2-270. - Informal bid procedures.

All purchasing of supplies, equipment and contractual services of a total estimated value of \$25,000.00 or less may be made in the open market without newspaper advertisement and without observing the formal bidding procedures prescribed by this article.

(Code 1981, § 8-35; Ord. No. 1997-22, § 6, 5-6-1997; Ord. No. 2004-15, § 5, 7-20-2004)

Sec. 2-271. - Emergency purchases.

Situations may arise whereby an exception to the city's policies and procedures may be required. Emergency purchases represent one of the potential situations. "Emergency" is defined as an unplanned or unexpected event that requires immediate action in order to prevent or remedy a service outage; or to prevent or remedy a situation that presents an immediate danger to human life, health or safety or a significant loss or damage to property, and where failure to take immediate action would enhance the risk of loss or prolong the delay in restoring service to customers. Routine repairs and planned refurbishment do not constitute emergencies. Therefore, the city may dispense with requirements for competitive solicitations and the city manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency. Emergency acquisitions of non-real property, goods or services where the expenditure by the city is estimated to exceed \$25,000.00 shall be subject to ratification by the city council at the next regularly scheduled meeting or as soon as practicable. The requesting department shall state the reason for the emergency purchase, and what caused the emergency situation, including a statement of financial or operational damage or risk that will occur if needs are not satisfied immediately. Once a determination has been made, the city may procure commodities or contractual services needed. However, such an emergency purchase shall be made by obtaining pricing information from at least two prospective vendors, which must be documented with the purchase request, unless the city determines that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the city.

(Code 1981, § 8-36; Ord. No. 1997-22, § 7, 5-6-1997; Ord. No. 2004-15, § 6, 7-20-2004; 2015-19, § 1, 5-19-2015)

Sec. 2-272. - Alterations or modifications of contracts.

- (a) Where in the opinion of the department head it becomes necessary for the prosecution of any work or improvement under contract to make alterations or modifications in such contract, such alterations or modifications may only be effected as follows:
- (1) *Unforeseen conditions allowance.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve expenditures up to the total amount of the allowance for unforeseen conditions as established upon award of the contract.
 - (2) *Change orders by city manager authority.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve change orders up to \$25,000.00 if an allowance is not included in the contract.
 - (3) *Emergency event.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve and execute change orders that increase the contract price beyond the unforeseen conditions allowance only for an emergency event that occurs during the performance of the contract and requires immediate resolution to avoid one or more of the following: additional costs that were not reasonably anticipated; delay to the project that increases costs; or endangerment of the public. Each change order issued as a result of an emergency event shall be brought to city council for ratification at the next available meeting, if the approval authority of the city manager has been exceeded or if the allowance has been exceeded.
 - (4) *Scope and time.* City council approval shall be required for changes in project scope, defined as changes that materially alter or expand the original intent of the project, taking into consideration the details included in the advertisement and previous award approval by council, if applicable. City council approval shall be required for changes in project time over 30 days.
- (b) Except as expressly modified in a change order, all other terms and conditions of the modified contract shall remain in full force and effect.
- (Code 1981, § 8-37; Ord. No. 1997-22, § 8, 5-6-1997; Ord. No. 2004-15, § 7, 7-20-2004; Ord. No. 2015-30, § 1, 8-18-2015; Ord. No. 2016-17, § 1, 10-18-2016)

Sec. 2-273. - Additional regulations and procedures.

The city manager is hereby authorized to prepare any written regulations and procedures not inconsistent with provisions of this article which he may deem to be necessary for the implementation of this article. Such regulations and procedures shall become effective if and when approved by the city council.

(Code 1981, § 8-38)

Sec. 2-274. - Procedures for the purchase of real property.

- (a) When the city seeks to acquire by purchase any real property for a municipal purpose, every appraisal, offer, or counter-offer shall be in writing.
- (b) Such appraisals, offers, and counter-offers shall not be available for public disclosure or inspection and are exempt from the provisions of F.S. § 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the city council. If a contract or agreement for purchase is not submitted to the city council for approval, the exemption from F.S. § 119.07(1) shall expire 30 days after the termination of negotiations. The city shall maintain complete and accurate records of every such appraisal, offer, and counter-offer. For purposes of this section, the term "option contract" shall mean a proposed agreement by the city to purchase a piece of property, subject to the approval of the city council at a public meeting after 30 days' public notice. The city shall not be under any obligation to exercise the option unless the option contract is approved by the city council at the public hearing.
- (c) The governing body shall obtain at least one appraisal by an appraiser approved pursuant to F.S. § 253.025(6)(b) for each purchase in an amount of not more than \$500,000.00. For each purchase in an amount in excess of \$500,000.00, the governing body shall obtain at least two appraisals by appraisers approved pursuant to F.S. § 253.025(6)(b). If the agreed purchase price exceeds 15 percent of the one appraisal or exceeds the average appraised price of the two appraisals, the city council shall be required to approve the purchase by a vote of two-thirds of the city council members. The governing body may, by majority vote of the council members present, exempt a purchase in an amount of \$100,000.00 or less from the requirement of an appraisal.
- (d) Notwithstanding the foregoing, this section shall authorize the city council, by majority vote of the council members present, to disclose the records of an acquisition of a specific purchase of real property, including the appraisal(s), if any, the offers and counteroffers. Once the city council has voted to disclose the records, the records of the purchase involving the same property and same property owner shall be open to inspection and reproduction until the termination of the negotiations. Upon city council's approval of the disclosure, the records shall be available for inspection and reproduction in accordance with F.S. § 119.07(1). The city council shall comply with subsections (a), (b) and (c) if the city council approves the disclosure of records.
- (e) When city council acquires funding in whole or in part from another governmental entity for the purchase of real property, the city council may piggyback the appraisal procedures of the other governmental entity that substantially complies with the procedures set forth in subsection (c).

(Ord. No. 2011-26, § 1, 10-18-2011)

Sec. 2-275. - Local purchasing preference.

- (a) *Purpose.* The city annually spends significant dollars on purchasing goods and services, and the dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues paid by businesses located within the City of Port Orange. The city council has determined that funds generated

in the community should, to the extent possible, be placed back into the local economy. Therefore, the city council has determined that it is in the best interest of the city to give a preference to local businesses consistent with the process set forth in this section.

- (b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Florida business means a business having its headquarters and principal place of business within the State of Florida, and not within Volusia County, at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of the State of Florida.

Local business means a Port Orange business, Volusia County business, or Florida business as defined herein.

Port Orange business means a business having its headquarters and principal place of business within the City of Port Orange at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of the City of Port Orange.

Principal place of business means the nerve center or the center of overall direction, control, and coordination of the activities of the business. If the business has only one business location, such business location shall be its principal place of business.

Volusia County business means a business having its headquarters and principal place of business within the County of Volusia, and not within the City of Port Orange, at least 12 months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.

- (c) *Local preference process.* Except where federal or state law, or any other funding source, mandates to the contrary, the city shall give preference to local businesses in the following manner:

(1) *Competitive bids.*

- a. *Port Orange business.* In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent of the lowest and best responsible bid submitted by a non-Port Orange business, then the Port Orange business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

b.

Volusia County business. In any competitive bidding process where a Volusia County business is within five percent of the lowest and best responsible bid submitted by a business other than a Port Orange business or Volusia County business, then the Volusia County business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

- c. *Florida business.* In any competitive bidding process where a Florida business is within three percent of the lowest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- d. *Tied bid preference.* In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

(2) *Request for proposals, qualifications or other qualitative submittals.* In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittals where the bidders are rated by a point system, local businesses shall be granted the following preference:

- a. Port Orange business shall be granted up to eight percent of the available points.
- b. Volusia County business shall be granted up to five percent of the available points.
- c. Florida business shall be granted up to three percent of the available points.
- d. *Tied bid preference.* In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

(d) *Misrepresentation prohibited; penalty.* Any business that misrepresents the local preference status of its firm in a proposal or bid submitted to the city shall lose the privilege to claim preference status, and shall lose eligibility to claim local preference status for a period of one year.

(e) *Local preference not required.* This section shall not be deemed to require the granting of a local preference, and nothing herein prohibits the award of a contract to a non-local business where such award is in the public interest.

(Ord. No 2015-16, § 2, 5-19-2015; Ord. No. 2016-18, § 1, 10-18-2016)

Sec. 2-276. - Suspension and debarment.

- (a) *Authority to debar or suspend.* In accordance with the provisions of this section, the city manager, after consultation with the city attorney's office, shall have the authority to debar an actual or prospective contractor for cause from consideration for award of contracts. The debarment shall be for a period of

not more than five years from the date of the final determination of debarment unless the contractor has been previously debarred by the city in which case any subsequent debarment shall be permanent. Upon initiation of debarment proceedings, the city manager, after consultation with the city attorney's office, shall also have the authority to suspend an actual or prospective contractor from consideration for award of contracts pending the final debarment determination. The suspension shall be for a period of one year or until a final determination with respect to debarment is made, whichever is earlier.

- (b) *Causes for debarment.* The causes for debarment shall include, but are not limited to, the following:
- (1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a contractor.
 - (3) Conviction or civil judgment finding under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Determination by a court, hearing officer, administrative official, or any local, state or federal governmental entity or agency that the contractor has violated the provisions of any local, state or federal laws or regulations.
 - (5) Commission of any fraud or misrepresentation in connection with a bid, quotation, proposal, solicitation, or contract with the city or other public entity, whether or not leading to a conviction.
 - (6) Failure to fully comply with the conditions, specifications or terms of a bid, quotation, proposal or contract with the city or any other person or public entity, including, but not limited to the following:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a bid/contract;
 - b. Abandonment of a contract;
 - c. Failure to pay a contractor, subcontractor, or material provider as required by Florida Statutes;
 - d. Repudiation of a bid/contract by failure to provide bonds, insurance, or other required certificates within a reasonable time period;
 - e. Refusal to accept an addendum, agreement or contract, or to perform thereon provided such addendum, agreement or contract was issued timely and in conformance with the bid or solicitation received; or
 - f. Overall performance of a contract which has been evaluated as "poor" or "unsatisfactory".
 - (7) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more bids/contracts with the city or any other person or public entity; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the

contractor shall not be considered to be a basis for debarment.

- (8) Presence of principals or corporate officers in the business or concern, who were principals or corporate officers within another business at the time when the other business was suspended or debarred under the provisions of this section or by another public entity.
 - (9) Violation of any ethical standards set forth in local, state or federal law.
 - (10) Any other cause or material factor which adversely affects the responsibility of a person or entity as a city contractor, including but not limited to, suspension or debarment by another governmental entity for any of the causes listed in this section.
- (c) *Permanent debarment.* In the event that a contractor has previously been debarred by the city for a period of five years or less pursuant to this section, and cause exists for a subsequent debarment of the contractor pursuant to subsection (b) above, said debarment shall be permanent.
- (d) *Notice of intent to debar.* Upon a preliminary determination by the city manager that cause exists for debarment, a contractor or prospective contractor shall be sent a written notice of intent to debar. Such notice shall state:
- (1) The reasons for the proposed debarment;
 - (2) The proposed length of the debarment;
 - (3) That the preliminary finding of cause and proposed debarment action shall become final, if a request for review is not timely filed in accordance with the provisions of subsection (e) below;
 - (4) Whether the person has been suspended pending finality of the debarment determination; and
 - (5) That suspended and/or debarred persons may not be considered for award or receive new contracts during the period of suspension and/or debarment.
- (e) *Request for review.* A contractor or prospective contractor that has received a notice of intent to debar may request that the proposed debarment action be reviewed and reconsidered. Such request shall be received by the city manager in writing within ten calendar days of issuance of the notice of the intent to debar. Such request for review and reconsideration shall state the basis for review and reconsideration, and shall include such documents, evidence, and other information as the requesting party deems necessary to support its position. If no request for review and reconsideration is received within the time period allowed, the determination of the city manager that cause exists for debarment and the proposed length of the debarment shall become final and all rights to request review or appeal shall be deemed waived.
- (f) *Review.* Upon timely filing of a written request for review, the city manager shall review and reconsider the preliminary determination of cause for debarment, with or without a meeting or hearing with the party requesting review, at the option of the city manager. The city manager may request information from, and speak individually or collectively to, any people or entities having information relevant to the debarment determination. The city manager shall render a written decision on the request for review and reconsideration, which shall include the city manager's final debarment decision and action taken, if any, within 30 calendar days following receipt of the request.

- (g) *Appeal of the city manager's decision.* The decision of the city manager may be appealed by the contractor proposed for debarment to the city council by submission to the city clerk of a written request for hearing within seven calendar days from the date of the city manager's written decision. When an appeal is scheduled for oral presentation before city council, the appellant and city manager shall each be given ten minutes to present the appeal and response. In its discretion, city council may extend the time allotted for argument and/or allow other interested persons to speak.
- (h) *Finality of decision.* The decision of city council shall be final and shall conclusively represent the position of the city.
- (i) *Debarred and suspended persons list.* The purchasing manager shall maintain a list of suspended and debarred persons. Persons which have been suspended or debarred shall be precluded from responding to solicitations or receiving awards of contracts from the city, and shall be excluded from conducting business with the city as agents, representatives, partners or associates of other contractors, subcontractors, affiliates or individual sureties, during the period of their suspension or debarment. Any bid or other response received from such a party during the period of their suspension or debarment shall be disregarded and not evaluated for potential award.

(Ord. No. 2015-28, § 1, 9-9-2015)

Sec. 2-277. - Bid protest.

- (a) Any person who is adversely affected by the city's decision or intended decision shall file with the city purchasing manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision as set forth on a city council agenda item or other routinely used on-line government procurement service. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, bids, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and city holidays shall be excluded in the computation of the 72-hour time period established herein.
- (b) The formal written protest shall be filed with the purchasing manager, in writing within ten calendar days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based.
- (c) Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings.
- (d) Upon receipt of the formal written protest that has been timely filed, the city shall stop the solicitation or contract award process until the subject of the protest is resolved by final city action. However, the city may continue the solicitation or award process, provided the city manager sets forth in writing particular facts and circumstances, which require the continuance of the solicitation or contract award

process without delay, in order to avoid an immediate and serious danger to the public health, safety or welfare. The city shall provide an opportunity to resolve the protest by mutual agreement between the parties in the following manner:

- (1) As soon as possible after receipt, the purchasing manager shall provide written bid protest to the city manager, city attorney, department head involved and supervisor directly involved in the acquisition.
- (2) The purchasing manager shall schedule within seven business days, excluding weekends and holidays a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before council. After reviewing all relevant information, the city manager shall render a decision.
- (3) If the protester disagrees, he may appeal to the city council at a formal council meeting. After reviewing the evidence, the city council will issue their decision. The city council's decision is final; however, the protester can appeal the administrative decision to the Circuit Court in Volusia County, Florida within 30 days of the city council's final decision. Decisions at all levels shall be in writing to the protestor.

(Ord. No. 2015-29, § 1, 8-18-2015)

Secs. 2-278—2-290. - Reserved.

RESOLUTION NO. 91-64

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PORT ORANGE, VOLUSIA
COUNTY, FLORIDA, ADOPTING
DESIGN-BUILD POLICIES AND
PROCEDURES; SUPERSEDING PRIOR OR
CONFLICTING RESOLUTIONS; AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 287.055, Florida Statutes (1991), the
Consultants' Competitive Negotiation Act, authorizes agencies,
including municipalities, to contract with design-build firms for
the design and construction of public projects; and

WHEREAS, Section 287.055(10)(a), Florida Statutes (1991),
requires agencies to award design-build contracts in accordance
with procurement laws, rules, and ordinances applicable to such
agencies; and

WHEREAS, Section 287.055(10)(c), Florida Statutes (1991),
requires each agency to adopt rules or ordinances for the award of
design-build contracts; and

WHEREAS, the City of Port Orange has prepared procedures
for the award of design-build contracts applicable to city
projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

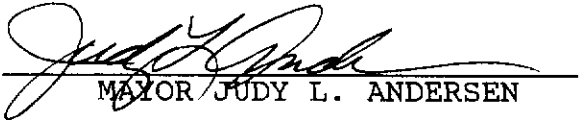
Section 1. The Design-Build Policies and Procedures,
attached hereto as Exhibit A, are hereby adopted as rules of the
City of Port Orange pursuant to Section 287.055(10), Florida
Statutes.

Section 2. This resolution shall supersede all prior

(RES. NO. 91-64)

or conflicting resolutions relating to policies and procedures for award of design-build contracts.

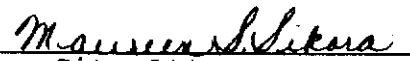
Section 3. This resolution shall become effective immediately upon adoption.


MAYOR JUDY L. ANDERSEN

ATTEST:


Kenneth W. Parker, City Manager

Adopted on the 17TH day of DECEMBER, 1991.

Reviewed and Approved: 
City Attorney

1.1 Subject: Special Considerations

:1 Objective To provide professional services for the City by the most qualified and competent individuals and firms at fair, competitive and reasonable compensation by complying with the requirements of Florida Statutes, Chapter 287.055 as amended (Consultants' Competitive Negotiation Act).

:2 Authority This procedure amended by City Council.

:3 Direction Designated City Manager.

:4 Method of Operation: A. GENERAL

Pursuant to directions for consultant services in Section # 13, Request For Proposals, this procedure shall be followed in selecting firms to provide professional services and in negotiating contracts for professional services in the field of architecture, engineering, landscape architecture, or land surveying. This procedure shall also be followed in selecting firms to provide design-build services and in negotiating contracts for design-build services.

B. DEFINITIONS

The following words and phrases for the purpose of this procedure shall mean:

Act - Florida Statutes, Section 287.055, as amended (Consultants' Competitive Negotiation Act).

Board - The Consultants' Qualifications Board (CQB) shall be composed of the Finance Director, the Project Manager, the City Engineer, or their designees, and one member to be appointed by the City Manager. The Project Manager shall act as Chairman of the CQB. As an alternative, the City Council may serve as the Board, in which case the Mayor shall act as Chairman of the CQB.

Certified Firm - Any firm which has been found qualified by the CQB to render one or all of the professional services provided for in the Act.

City - The City of Port Orange.

1.1 Subject: Special Considerations

:4 Method of
Operation: Compensation - The total amount paid by the
City for professional services.

Continuing Contract - A contract for professional services between the City and a firm whereby the firm provides professional services to the City for projects in which the construction costs do not exceed \$500,000, or for study activity when the fee for such professional service does not exceed \$25,000, or for work of a specified nature as outlined in the contract with no time limitation except that the contract shall provide a termination clause.

Design-Build Contract - A single contract with a design-build firm encompassing the design and construction of a Project.

Firm - Any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice architecture, engineering, landscape architecture, or land surveying in the State of Florida.

Design-Build Firm - An individual, partnership, corporation or other legal entity which is certified to engage in contracting as or through a certified or registered general or building contractor and is certified to practice or to offer to practice engineering, architecture or landscape architecture.

Design Criteria Package - Concise performance oriented drawings and specifications of the requirements of the Project which define the design parameters and the time and budgetary constraints to be achieved.

Design Criteria Professional - An individual or firm which holds a current certificate of registration to practice architecture or landscape architecture or an individual or firm which holds a current certificate as a registered engineer and who is employed by or under contract to the City for the provision of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

1.1 Subject: Special Considerations

:4 Method of
Operation:

Professional Services - Those services within the scope of practice of architecture, landscape architecture, professional engineering or registered land surveying as defined by the laws of the State of Florida, or those performed by any architect, landscape architect, professional engineer or registered land surveyor, in connection with this professional employment or practice.

Project Construction - A construction, rehabilitation or renovation activity designated by the City Manager which requires professional consulting services as defined in these procedures. A construction project may constitute a grouping of minor construction, rehabilitation or renovation activities or a grouping of substantially similar construction, rehabilitation or renovation activities.

Project, Planning or Study - A planning or study activity which requires professional consulting services as defined in these procedures. The City Manager may determine that a planning or study activity constitutes a grouping of minor activities or grouping of similar activities.

Selection Team - Is comprised of members of CQB and a City Council Representative who review the proposals, interview the firms and make recommendations to City Council for authorization to negotiate and enter into a contract with the selected firm(s), accordingly. As an alternative, the City Council may serve as the Selection Team.

C. QUALIFICATION PROCEDURES - GENERAL

1. Periodic Review

From time to time as deemed necessary by the City, it shall review the statements of qualifications and performance data submitted by interested firms or design-build firms and shall review other pertinent information available to the Board to determine if individual firms are certified to render services to the City. Among the factors to be considered in making a determination as to certification are the capability and adequacy of personnel, and the past record and experience of the firm.

1.1 Subject: Special Considerations

:4 Method of
Operation:

2. Performance Review

The Board may request evaluation of the on-going performance of each firm or design-build firm under contract to render professional services to the City and may make that evaluation part of the permanent record as information to be used when the firm again is under consideration for City work. In making an evaluation, consideration shall be given to performance in meeting quality level of services called for in the contract; to performance in administration; and in liaison with the City, Construction Contractor, and other persons concerned.

3. Certification Lists

The Board shall cause to be maintained a current list of certified firms and design-build firms along with a designation for each firm indicating the categories of work for which the firm is certified.

4. Yearly Updates

From time to time as deemed necessary, a letter may be sent by the City to each firm on the certified list requesting a current form or letter updating the information on file pertaining to professional qualifications.

D. CONSTRUCTION PROJECTS OVER \$120,000, PLANNING OR STUDY ACTIVITIES PROJECTS OVER \$10,000 AS DESIGNATED IN FLORIDA STATUTES 287.017, CAT. FIVE

When a project has an estimated basic construction cost exceeding \$120,000, or when the estimated fee for professional services for planning or study activities exceeds \$10,000, and a continuing contract is not feasible or desirable, the following shall apply:

1.1 Subject: Special Considerations

:4 Method of
Operation:

1. Publication

The City shall cause to be published in a newspaper of general circulation within the area, or each occasion when professional services are required to be purchased, a legal notice generally describing the project and indicating how interested firms can apply for consideration. Announcements also may be mailed to each certified firm which has requested such notification. This publication requirement, however, shall not apply in any case declared to be a valid public emergency as defined in the Code of Ordinances.

E. NONEXCLUSION OF PUBLIC

The public shall not be excluded from any proceedings under these regulations. Meetings held under this procedure shall be announced by posting the time and place of each meeting on the City Meeting Schedule at least twenty-four (24) hours in advance of the meeting. Written summaries of the Committee's and selection team's decisions shall be made.

F. REASONABLE PLANS

Notwithstanding any other provision of this Section, there shall be no public notice requirement or utilization of the selection process as provided in the Section for projects in which the City is able to reuse existing plans from a prior project; provided, however, subsequent to July 1, 1975, public notice for any consulting services which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse in accordance with State Statutes.

G. CONTINUING CONTRACTS

Nothing in this procedure shall exclude continuing contracts between a firm and the City. The selection of continuing contract consultant shall be as outlined in Section 1.1:4D herein.

1.1 Subject: Special Considerations

:4 Method of
Operation:

H. SELECTION OF DESIGN-BUILD FIRM

1. Design Criteria Professional

The Design Criteria Professional shall either be a City employee or shall be selected and contracted with in accordance with the requirements of Chapter 287.055, Florida Statutes, as amended. The Design Criteria Professional shall not be eligible to render services under the Design-Build Contract.

2. Design Criteria Package Requirements

The Design Criteria Package shall be prepared by the Design Criteria Professional. It shall consist of performance oriented drawings and specifications of the requirements of the Project which define the design parameters and the time and budgetary constraints to be achieved. Performance based criteria may include, but are not limited to, the legal description of the site, survey information, interior space requirements, material quality standards, schematic layouts and conceptual design criteria, cost or budget estimates, design and construction schedules, site development requirements, utility requirements, stormwater retention and disposal, and parking requirements, as may be applicable to the Project. The firm to whom the Design-Build Contract is awarded will be responsible for creation of the Project design based upon the criteria in the Design Criteria Package.

3. Design Criteria Professional Review

The Design Criteria Professional will assist in the evaluation of the Project design drawings developed and submitted for review by the Design-Build Firm. The Design Criteria Professional will also review, as required, the Project construction and report to the City as to its compliance with the Design Criteria Package requirements.

1.1 Subject: Special Considerations

:4 Method of
Operation:

4. Publication

The Selection Team shall notify Purchasing who will cause to be published in a newspaper of general circulation within the area a legal a legal notice generally describing the Project and indicating how interested firms can apply for consideration. This publication requirement, however, shall not apply in any case declared to be a valid public emergency as defined in the Code of Ordinances.

5. Discussion with Proposer

The Purchasing Coordinator and/or the Project Manager may hold discussions with proposers for the purpose of clarification of the intent of the Project. All proposers shall be afforded fair and equal treatment with respect to any opportunity to discuss the Project.

6. Competitive Selection

a. Selection Team

A formal selection committee shall be established as described in Section 1.1:4D4a herein.

b. Selection Process

The Selection Team shall review and evaluate the proposals submitted by the Design-Build Firms for the Project. The Selection Team shall conduct discussions with, and may require public presentation by no fewer than three (3) firms (unless less than three (3) firms submit proposals) to determine the most qualified to provide services, considering such factors as the ability of personnel; past performance of the firm; ability to meet time and budget constraints; location of firm; financial capability; recent, current and projected work loads of the firm, and other factors which may be established prior to the solicitation of proposals. The Selection Team shall consult with the Design Criteria Professional concerning the evaluation of the proposals.

1.1 Subject: Special Considerations

:4 Method of
Operation:

The Selection Team may utilize a design competition as a part of the selection process. The Selection Team will report its selections in order of preference to the City Council. The City Council shall either approve, reject or revise the order of preference.

7. Negotiation

a. First Firm

When an order of preference has been approved by the City Council, the Selection Team and/or City Attorney shall attempt to negotiate a contract for design-build services with the firm which has been determined first preference. As a part of the negotiation and in making the determination, the Selection Team shall conduct a detailed analysis of the cost of the design-build services required giving full consideration to the scope and complexity of such services.

b. Additional Firms

Should the Selection Team/City Attorney be unable to negotiate a tentative contract with the first firm listed at a price determined to be fair, competitive and reasonable, negotiations with that firm shall then be undertaken; and failing accord with the second firm, negotiations with the third firm shall be undertaken.

c. Additional Selections

If the Selection Team/City Attorney is unable to negotiate a satisfactory contract with any of the selected firms, notice shall be given to the City Council. Upon direction of the City Council, additional firms shall be selected in accordance with this Section. Negotiations shall continue in accordance with this Section until an agreement is reached.

d. Legal Review

Such successfully negotiated agreement shall be subject to approval as to form and legality by the City Attorney and to final approval by City Council.

- 1.1 Subject: Special Considerations
- :4 Method of
Operation:

I. STATUTORY CONTRACT REQUIREMENTS

1. Truth in Negotiations

The City shall negotiate a contract with the most qualified firm for professional services at compensation which the City determines is fair, competitive, and reasonable. In making such determination, the City shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For all lump-sum or cost-plus-a-multiplier professional service contracts over \$6,000, the City shall require the firm receiving the award to execute a truth-in-negotiations certificate stating that wage rates and other factual unit costs supporting the compensation are current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums (by which) the City determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

CITY OF PORT ORANGE
REQUEST FOR PROPOSALS AND CONSULTANT SELECTION

Policy

All projects which have an estimated construction cost of \$500,000 or more, or consultant fees to exceed \$25,000 must be advertised and go through the consultant selection process, following Florida State Statute 287.055, the Consultant's Competitive Negotiation Act.

Consultant selection for projects with a construction cost of less than \$500,000 and a consultant's fee of less than \$25,000 can be handled in the following ways:

- a) Use the same procedure as for larger projects.
- b) Perform the design "in-house."
- c) Use a consultant with a continuing contract with the City.

In all cases, the City of Port Orange Policy and Procedures must be followed. See attachment.

Purpose

To select an appropriate consultant to perform the required engineering and/or architectural duties required by the project.

Responsibilities

The Project Manager is responsible for coordinating all activities in this procedure. Failure of the Project Manager to follow through on any item will result in delay and interruption of the process.

Implementation

Prior to the selection of any consultant, the requesting department shall prepare a "Request for Consultant Services" form to assess whether the work can be performed better, more timely or more cost effectively by an outside consultant rather than by in-house City staff. This form must be signed by the City Manager and forwarded to Finance and Purchasing along with a properly filled-out Purchasing Requisition (see Policy and Procedures, Section 14, No. 14.01 "Bids").

Once approval has been received, the consultant selection process is started.

A. Consultant Selection Team

The Consultant Selection Team is set up by the City Manager and will usually consist of the Project Manager, the Consultant Qualification Board (CQB), and the City Purchasing Coordinator or her designee.

Proceed as follows:

1. Set up your part of the Selection Team.
2. Set up a schedule for the selection process, including dates for advertising, request for proposal, shortlist, interviews and City Council. See sample schedule in attachment.
3. Purchasing Coordinator will notify the City Clerk for posting prebid and shortlist meetings and interviews as public meetings.
4. Purchasing Coordinator will notify members of the Selection Team of their appointment and give them copies of the Selection Process Schedule. Ask if any of them wishes to decline the appointment and replace them as necessary.
5. The Project Manager will be the Chairperson of the Consultant Selection Team.

B. Request for Proposal (R.F.P.)

An RFP is developed to describe the project and the consultant services required and to determine which consultants are interested in acquiring this project. In describing the project, be brief. Be broad in nature as to services required. The phrase "included but not limited to ..." is a good one to use.

The following steps should be taken when preparing an RFP:

1. Draft the RFP.
2. Purchasing will send copies of the draft for review to the City Manager, City Attorney and Chairperson of CQB. If applicable, also to other pertinent staff.
5. Get consultant mailing list from Purchasing and send a copy of the RFP to all (or selected) firms.
6. Request that proposals be received a minimum of ten (10) days and a maximum of four (4) weeks from the date the RFP is advertised.
7. It is acceptable to discuss or answer appropriate questions regarding the project with prospective consultants. Be brief and do not get into details.

8. The proposals are received by the Purchasing Coordinator who reviews them, has copies made, and then distributes them to the Project Manager and Selection Team for review.

C. Shortlisting

After the consultants' proposals are received, it is necessary to reduce the list of applicants to a shortlist of from three to five firms.

1. When the proposals are received, the various firms are reviewed by the Purchasing Coordinator to make sure that they have the required expertise and services to do the particular project.

2. A meeting of the Selection Team will be held to develop the shortlist. The Purchasing Coordinator will take minutes of the meeting and place them in the Purchasing file.

It is important to note that the Selection Team should not get together, say over lunch, and discuss the proposals, or accept any gifts from consultants submitting on this project during the Selection Process.

3. Each member of the Selection Team should be requested to develop their own shortlist and these lists should be submitted to the Project Manager at the shortlist meeting. The official shortlist is then determined by the firm receiving the most votes. In developing their shortlists, each Selection Team member may inquire of other Project Managers/Construction Managers of Consultants' past performance, before the shortlist meeting.

4. Once shortlist has been established, the Purchasing Coordinator will notify shortlisted firms of date, time and place of interviews and other pertinent information. Notify them to bring their own slide projector, screen, easel and any other items needed for their presentation.

5. The Purchasing Coordinator will also notify all other applicant firms of their failure to make the shortlist and thank them for their interest.

D. Consultant Interviews

The consultants on the shortlist are now interviewed, at a public meeting, in order to rate them in order of preference. A recommendation will be then made to City Council to negotiate a contract with the highest ranked firm(s).

Procedure is as follows:

1. Check the meeting schedule with City Clerk to be sure that meeting is posted.
2. Interviews are held at the time and place scheduled. Each interview is generally limited to a 20 to 45 minute presentation and a 5 to 20 minute question and answer session.
3. Upon conclusion of the final interview, each Selection Team member ranks the firms in order. The strengths and weaknesses of each firm is discussed. Final ranking of the firms is established by the number of votes received.

The Purchasing Coordinator takes the minutes of the meeting and places them in the Purchasing file.

4. The Purchasing Coordinator notifies each of the shortlisted firms of the ranking results. See sample letter and attachment.

E. City Council Approval of Selection

It is now necessary to obtain City Council approval of the consultant selection and authorization to begin negotiations with the highest ranked consultant. A standardized City Council Agenda Item Form is prepared with consultant selection recommendations.

RESOLUTION NO. 13 - 24

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, GRANTING AUTHORITY TO THE CITY MANAGER REGARDING WAIVER OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS, EXECUTION OF CONTRACTS, AND IMPOSITION AND SATISFACTION AND RELEASE OF LIENS; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes that requiring payment and performance bonds, while necessary for certain large projects, may inordinately burden contractors performing smaller projects for the city; and

WHEREAS, pursuant to Section 255.05(d) of the Florida Statutes, the City Council has discretion to waive a payment and performance bond when awarding contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, and the work to be completed is estimated to be \$200,000 or less.

WHEREAS, the City Council wishes to promote competitive bidding for all projects whether small or large; and

WHEREAS, the City Council desires to authorize the city manager to waive the payment and performance bond requirement for city projects that are estimated to be \$25,000 or less; and

WHEREAS, the City Council recognizes that the delegation of authority to the city manager to executed contracts of \$25,000 or less, with the attestation of the city clerk promotes efficiency and effectiveness in the operations of the city; and

WHEREAS, the city is authorized to impose liens on property in order to recover debt as prescribed by ordinance; and

WHEREAS, the City Council deems it prudent to authorize the city manager or his designee to execute liens and lien satisfactions and releases on behalf of the city.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida, hereby authorizes the city manager to waive, in whole or in part, any and all payment and performance bond requirements on city projects for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, except for those contracts for the construction or extension of public utilities pursuant to Section 180.24 of the Florida Statutes, and unless otherwise required by law; and when the work to be completed is estimated to be \$25,000 or less, or an amount consistent with the Code of Ordinances, Section 2-270, Informal bid procedures, as amended from time to time.

SECTION 2. The City Council of the City of Port Orange, Florida, hereby authorizes the city manager to execute contracts on behalf of the city, with the attestation of the city clerk in an amount of \$25,000 or less, or an amount consistent with the Code of Ordinances, Section 2-270, Informal bid procedures, as amended from time to time.

SECTION 3. The City Council of the City of Port Orange, Florida, hereby authorizes the city manager or his designee, per the city manager's written authorization, to execute liens and lien satisfactions and releases on behalf of the city.

Said documents shall be reviewed and approved by the City Attorney or Assistant City Attorney prior to recording.

SECTION 4. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

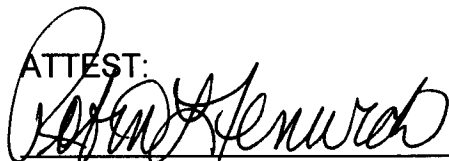
SECTION 5. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 6. This resolution shall become effective immediately upon final passage by the City Council.



MAYOR ALLEN GREEN

ATTEST:



Robin L. Fenwick, City Clerk

Adopted on the 28 day of May, 2013

Reviewed and Approved:


City Attorney

RESOLUTION NO. 14-12

**A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA; APPROVING THE
BIDDING PROCEDURES NECESSARY TO COMPLY
WITH THE FEDERAL REQUIREMENTS FOR FEDERALLY
FUNDED PROJECTS; PROVIDING FOR CONFLICTING
RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Port Orange (City) establishes the following procedures
for federally funded projects; and

WHEREAS, the City shall comply with the federal funding requirements to qualify
for funding through Florida Department of Transportation Local Agency Program; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF PORT ORANGE, FLORIDA as follows:

SECTION 1. Local preference for bidders shall not be permitted for federally
funded projects.

SECTION 2. All federally funded projects shall be advertised bid solicitations
a minimum of three weeks.

SECTION 3. All bids received shall be read aloud or, if not read aloud, shall
have the name of the bidder and the reason for not reading the bid aloud publically
announced.

SECTION 4. For federally funded projects, the City shall utilize 23 CFR
635.114, attached as Exhibit "A", for guidance in determining if a bid is unbalanced and
23 CFR 635.413, attached as Exhibit "B", for guaranty and warranty guidance.

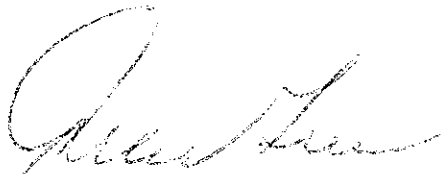
SECTION 5. When establishing a contract time for all federally funded projects, the City shall utilize the guidelines established and attached as Exhibit "C".

SECTION 6. All requests for qualifications for federally funded projects shall include reference to the requirements of United States Code (U.S.C) Title 40, Chapter 11, Section 1101-1104 *Selecting Architects and Engineers* (Brooks Act).

Section 7. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

Section 8. 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 this 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 9. This resolution shall take effect immediately upon adoption.



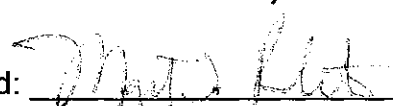
MAYOR ALLEN GREEN

ATTEST:



Robin Fenwick, CMC, City Clerk

Adopted on the 25 day of March, 2014.

Reviewed and Approved: 

City Attorney

EXHIBIT "A"

§ 635.113

offerors have received all issued addenda.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 72 FR 45386, Aug. 14, 2007; 73 FR 77502, Dec. 19, 2008]

§ 635.113 Bid opening and bid tabulations.

(a) All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

(b) The STD shall prepare and forward tabulations of bids to the Division Administrator. These tabulations shall be certified by a responsible STD official and shall show:

(1) Bid item details for at least the low three acceptable bids and

(2) The total amounts of all other acceptable bids.

(c) In the case of a design-build project, the following requirements apply:

(1) All proposals received must be opened and reviewed in accordance with the terms of the solicitation. The STD must use its own procedures for the following:

(i) The process of handling proposals and information;

(ii) The review and evaluation of proposals;

(iii) The submission, modification, revision and withdrawal of proposals; and

(iv) The announcement of the successful offeror.

(2) The STD must submit a post-award tabulation of proposal prices to the FHWA Division Administrator. The tabulation of price proposal information may include detailed pricing information when available or lump sum price information if itemized prices are not used.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

23 CFR Ch. I (4-1-11 Edition)

§ 635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the STD in accordance with § 635.110. Award shall be within the time established by the STD and subject to the prior concurrence of the Division Administrator.

(b) The STD shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the STD shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the STD's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a STD decision not to award the contract. If, however, the STD decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the STD determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify

and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the STD rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the STD to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the STD for contract award forfeits the bid guarantee, the STD may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the STD and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

(k) In the case of a design-build project, the following requirements apply: Design-build contracts shall be awarded in accordance with the Request for Proposals document. See 23 CFR Part 636, Design-build Contracting, for details.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

§ 635.115 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the STD and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the STD for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall

normally be based on the estimated quantities and the unit prices agreed upon in advance between the STD and the Division Administrator, whether the work is to be done by the STD or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The STD shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the STD in writing. Prior to authorizing a subcontract, the STD shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the STD to satisfy

EXHIBIT "B"

Federal Highway Administration, DOT

§ 635.417

(c) A State transportation department may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

(d) Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.

(e) In the case of a design-build project, the following requirements apply: Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the Request for Proposals document unless the conditions of paragraph (a) of this section are applicable.

[41 FR 36204, Aug. 27, 1976, as amended at 67 FR 75926, Dec. 10, 2002; 71 FR 66454, Nov. 15, 2006]

§ 635.413 Guaranty and warranty clauses.

The STD may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A STD may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.

(e) In the case of a design-build project, the following requirements

will apply instead of paragraphs (a) through (d) of this section.

(1) General project warranties may be used on NHS projects, provided:

(i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.

(ii) The warranty is not the sole means of acceptance;

(iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,

(iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.

(2) Performance warranties for specific products on NHS projects may be used at the STD's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

(3) The STD may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.

(4) For best value selections, the STD may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

§ 635.417 Convict produced materials.

(a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of

EXHIBIT "C"

FLORIDA DEPARTMENT OF TRANSPORTATION

***GUIDELINE FOR
ESTABLISHING CONSTRUCTION
CONTRACT DURATION***

July 2010

DISCLAIMER:

The following documentation as a whole was derived from Federal Highway Administration's Guide for Construction Contract Time Determination Procedures (TA 5080.15 dated 10/15/02)

Purpose

To provide guidelines for determining contract time for construction projects.

Authority

Sections 334.044(2) and 337.18, Florida Statutes

Background

- A. Contract time is the maximum time allowed in the contract for completion of all work contained in the contract documents. Contract time often arises as an issue when there is too much time or too little time given in the contract. If too much time is allowed then the traveling public is being inconvenienced and the contractor does not appear to be aggressively pursuing the work. There may be a number of reasons for a project to appear dormant, such as weather limitations, concrete curing times, materials arriving late, etc. However, all too often the causes are traceable to excessive time originally established by the scheduling engineer to complete the project or poor contractor scheduling of construction operations. If not enough time is allowed then the contractor will submit claims for added cost and time to the contract.
- B. In many instances, the duration of highway construction projects is more critical today than it was in the past. Several of the reasons are listed below:
 - 1. There are an increasing number of resurfacing, restoration, and rehabilitation type projects being constructed under traffic, resulting in an increase in the exposure of construction workers and motorists.
 - 2. Traffic volumes on most highways are significantly greater and are continuing to increase, thereby creating a greater impact on the motoring public in both safety considerations and cost.
 - 3. Proper selection of contract time allows for optimization of construction engineering costs and other resources.
- C. In addressing the need for completing critical construction projects where it is important to minimize traffic inconvenience and delay, many States have applied non-traditional contracting methods such as Bonuses and Incentive/Disincentive specifications for early completion.

Elements in Determining Contract Time

- A. The application of written procedures for determining contract time is important so that production rates and other considerations are applied uniformly throughout the State. This document should be used in conjunction with the procedures in the ***Construction Project Administration Manual (CPAM)***, ***Section 1.2*** addresses how to classify projects based upon appropriate factors such as high traffic volumes, projects with incentive/disincentive clauses, etc. Experience and judgment should be used in the final determination for which projects are critical. These procedures also address the importance of geographical and weather differences throughout the State, which could affect contractor productivity rates. The fact that some types of work can or cannot be undertaken during certain times of the year should also be addressed. Where applicable, the affect of working under traffic also needs to be considered such as lane closure restrictions, holidays and special events.
- B. The reasonableness of the contract time included in contracts is important. If time is insufficient, bid prices may be higher and there may be an unusual number of time overruns and contractor claims. Contractors should be provided the ability to schedule work to maximize equipment and labor, and if contract time is too short, these efficiencies are more difficult to obtain resulting in higher prices. If the time allowed is excessive, there may be cost inefficiencies by both the Department and the contractor. The public may be inconvenienced unnecessarily and subjected to traveling on a roadway where safety is less than desirable for an extended period of time. In establishing contract time, the scheduling engineer should strive for the shortest practical traffic interruptions to the road user. If the time set is such that all work on a project may be stopped for an extended period (such as scheduled events) and the contractor can still complete the project on schedule, it means the contract time allowed was excessive.
- C. For most projects the essential elements in determining contract time include: (1) establishing production rates for each controlling item; (2) adopting production rates to a particular project; (3) understanding potential factors such as business closures, environmental constraints; and (4) computation of contract time with a progress schedule.

Establishing Production Rates

- A. A production rate is the quantity produced or constructed over a specified time period. Estimating realistic production rates is important when determining appropriate contract completion time. Production rates may vary considerably depending on project size, geographic location, and rural or urban setting, even for the same item of work. Production rate ranges should be established in the State's written procedures based on project type (grading, structures, etc.), size, and location for controlling items of work.

- B. In establishing production rates to be used for determining contract time, an accurate database should be established by using normal historical rates of efficient contractors. One method of establishing production rates is to divide the total quantity of an item on previously completed projects by the number of days/hours the contractor used to complete the item. Production rates based upon eight-hour crew days or per piece of equipment are recommended. Production rates developed by reviewing total quantities and total time are not recommended as they may result in misleading rates which tend to be low since they may include startup, cleanup, interruptions, etc.
- C. The most accurate data will be obtained from site visits or review of project records (i.e., field diaries and other construction documents) where the contractor's progress is clearly documented based on work effort, including work crew make up, during a particular time frame. A data file based on three to five years of historical data (time, weather, production rates, etc.) should be maintained.
- D. The production rates used should be based on the desired level of resource commitment (labor, equipment, etc.) deemed practical given the physical limitations of the project. Representatives of the construction industry are also usually willing to assist in developing rates and time schedules. Rates should be updated regularly to assure they accurately represent the statistical average rate of production in the area.
- E. Some jurisdictions apply production rate data taken from some of the published rate guides. This data may be useful as guidance; however, the relationship of these production rates to actual highway construction projects may be difficult to correlate.

OTHER FACTORS WHICH INFLUENCE CONTRACT TIME

- A. In addition to production rates, the following items should be considered when determining contract time:
 - 1. Effects of maintenance of traffic requirements on scheduling and the sequence of operations;
 - 2. Curing time and waiting periods between successive paving courses or between concrete placement operations, as well as specified embankment settlement periods;
 - 3. Seasonal limitations for certain items when determining both the number of days the contractor will be able to work as well as production rates;
 - 4. Conflicting operations of adjacent projects, both public and private;

5. Time for reviewing false-work plans, shop drawings, post-tensioning plans, mix designs, etc.;
6. Time for fabrication of structural steel and other specialty items;
7. Coordination with utilities;
8. Time to obtain necessary permits;
9. The effect of permitting conditions and/or restrictions;
10. Restrictions for nighttime and weekend operations;
11. Time of the year of the letting as well as duration of the project;
12. Additional time for obtaining specialty items or materials with long-lead requirements;
13. Other pertinent items as determined by the Scheduling Engineer.

In setting contract time it is recommended that the time is based on production rates per hour or per day on a working day basis, a conversion factor of 1.4 should be used and non work days should not be programmed into the scheduling software. If non-working days are calculated into the schedule such as holidays, keep in mind when granting day for day time.

Adapting Production Rates to a Particular Project

- A. Before time durations for individual work items can be computed, certain project specific information should be determined and some management decisions made. The relative urgency for the completion of a proposed project should be determined. The traffic volumes affected as well as the effect of detours should be analyzed. The size and location of the project should be reviewed, in addition to the effects of staging, working double shifts, nighttime operations, and restrictions on closing lanes. The availability of material for controlling items of work should be investigated. For example, it might be appropriate to consider the need for multiple crews on a specific item to expedite the completion when there are exceptionally large quantities or when there is a large impact on traffic.
- B. Procedures to accelerate project completion should be considered when construction will affect traffic substantially or when project completion is crucial. This is especially important in urban areas with high traffic volumes. When accelerating contract time for time sensitive projects, production rates should be based on an efficient contractor working more than eight hours per day, more than five days per week and possibly with additional workers. The development

and application of a separate set of production rates for critical projects is recommended.

Computation of Contract Time - Develop a Progress Schedule

- A. The contract time for most construction projects can be determined by developing a progress schedule. A progress schedule shows the production durations associated with the chosen production rates for the items of work. The time to complete each controlling item of work included in the progress schedule is computed based on the production rates applicable to that project. Items should be arranged by chronological sequence of construction operations. Minor items that may be performed concurrently should be shown as parallel activities.
- B. In determining a progress schedule it should be remembered that the start and end dates for each controlling item need to be based on the earliest date for which work on that item will begin and how long it will take to complete. The earliest start date for each activity will be determined by the completion of preceding activities, and should allow for the fact that some activities can begin before the preceding activity is entirely completed. Additional time should be also allowed in the contract for initial mobilization.

Contract Time Determination Techniques

Contract time determination techniques generally fall into the categories of bar charts and critical path techniques. These techniques are described below:

- A. Bar Charts
 - 1. Bar charts or Gantt charts are graphical representations of projects with specific completion dates and activities. Bars or lines are drawn proportional to the planned duration of each activity.
 - 2. A brief description of the procedure used to develop a bar chart to determine contract time is as follows:
 - a. The first step in developing a bar chart is to break a project down into separate activities or operations necessary for project completion.
 - b. Once all the activities necessary to complete a project have been listed, the duration and completion date of each activity needs to be determined based on production rates.
 - c. With this data established, the bar chart can be prepared. A line or bar is drawn on the chart showing the time when work will be performed for each activity. The resulting diagram will represent a

project, showing when each activity will be undertaken and completed.

- d. With bar charts, the progress of a project may be monitored for each activity by drawing a bar or line below the original scheduled performance to show the actual duration for each activity as it is completed.
3. Bar charts are advantageous in that they are simple to develop and easy to understand, and they offer a good method of determining contract time. Some disadvantages are that they do not show the interrelationship and inter-dependency among the various phases of work. Bar charts are difficult to properly evaluate when construction changes occur. Also, controlling items are shown in the same manner as minor items, thus making it more difficult to determine which items actually control the overall time progress of the project. The use of bar charts are not recommended for contract administration and project management of large or complex construction projects.

C. Critical Path Method (CPM)

The Critical Path Method (CPM) focuses on the relationship of the critical activities, specifically, those which must be completed before other activities are started. Working from the project's beginning and defining individual project tasks and the number of days to perform each task, a logical diagrammatic representation of the project is developed. A CPM depicts which tasks of a project will change the completion date if they are not completed on time. The evaluation of critical tasks allows for the determination of the time to complete projects. Because of the size and complexity of most projects, this method is most often applied using a computer software program. Within the CPM software, the ability to use a Program Evaluation Review Technique (PERT) provides a breakdown of each activity to boxes. This enables the user to view the connection of relationships to each activity. CPM software also has the ability to display the contract time in a bar chart view as well.

1. The first step in applying the CPM method is to break a project down into separate tasks or operations necessary for project completion. Each of these separate operations or processes is called an activity. The completion of an activity is called an event.
2. Once all the activities necessary to complete a project have been listed, the relationship of these activities to one another needs to be determined. In some instances, several activities can be undertaken concurrently, and at other times, certain activities cannot be undertaken until others have been completed. Generally, when determining the sequence of operations, some questions need to be asked such as: "What needs to be

done before proceeding with this activity" or "what can be done concurrently?" Every activity has a definite event to mark its relationship with others with respect to completing a task.

3. In working with this procedure, a diagrammatic representation of the project is developed showing the correct sequence and relationship of activities and events. Each activity is shown as an arrow leading to a node, which indicates the completion of an event or the passage of time. The start of all activities leaving a node depends on the completion of all activities entering a node. Therefore, the event represented by any node is not achieved until all activities leading to the node have been completed. The resulting diagram will be a schematic representation of a project, showing all the relevant activities and events in correct sequence.
4. An actual time can be set to each activity based on production rates and other appropriate factors. The time to complete each activity is then shown on each arrow to indicate the duration. The "early start" for each activity is the earliest point in time that an activity can start, provided that all activities before it have finished. This is not necessarily the point in time that it will start; however, it is the earliest time that it can start. The "early finish" for an activity is merely the duration of the activity after its early start. As is the case with the "early start," this is not necessarily the point in time that the work represented by the activity will be over, but is the earliest point in time that it can occur. A "finish" date in CPM is the first day after the physical completion of the activity. The completion time of a project is the sum of the longest time path leading to completion of the project.
5. The optimum time and cost for performing the project can be evaluated by assigning resources i.e. equipment, labor hours, and materials to each activity. The diagrammatic representation of the project then provides a means to evaluate the costs incurred with respect to the completion of specified activities.
6. Advantages of using the CPM include:
 - It is an accurate technique for determining contract time and verifying that the project can be constructed as designed and with identified construction sequences;
 - It is a useful tool for project managers in monitoring a project, especially when dealing with relationships of work items with respect to time; and
 - Activities responsible for delays can be identified and corrective measures to keep a project on schedule can be determined.

7. Disadvantages of using the CPM include:

- The CPM requires experienced and knowledgeable staff to be used effectively;
- They require regular updates to assure that the contractor's operation is accurately represented.

Other Project Considerations

Construction time on certain projects such as lighting or signalization may be governed by the long lead-time necessary to obtain materials. To minimize traffic disruption, the contract may specify a completion date several months after the notice to proceed, but the contractor should be limited to a relatively short on-site time. This may be accomplished by including in the contract a "conditional notice to proceed" clause which would allow a specified amount of time to purchase and assemble materials followed by issuance of a full work order which would be issued upon expiration of the assembly period or sooner, upon the contractor's request.

Delayed or flexible notice-to-proceed dates may be appropriate for certain projects where the ultimate completion date is not critical. The contracting agency may wish to provide a notice-to-proceed window in order to increase the probability of a competitive bid where only a limited number of contractors are available to perform the work. Such projects may include:

- Projects that consist of specialized work (seal coats, highway planting, pavement grooving or bridge painting) where a large number of these projects are being advertised within a short time period;
- Projects with a very limited number of working days;
- Building projects.

This allows the contractor to schedule this contract with consideration of other work he/she may have in the same paving season. Net benefits include lower project inspection cost and a minimal disruption to traffic.

An option that may be applicable to some projects is dividing a project into phases with each phase having its own completion date. This may be applicable when coordinating with other projects or activities in the area in order to meet tight deadlines.

BASIS OF PRODUCTION RATES:

The production rates shown are divided into 3 categories: low, average and high. The **low** rate is typically used on projects where there are large numbers of intersections, driveways, high congested traffic and a large number of existing utilities which may interfere with the proposed construction. The **average** rate is typically used in projects where there are minimum existing utilities, low to medium traffic volume/congestion with minimal intersections and driveways. The **high** rate is typically used on rural and limited access facilities.

SCOPE OF WORK DEFINITIONS:

R.O.W. Preparation:

Clearing and grubbing (Acres): The removal of top soil, trees, minor physical objects and other vegetation from the construction site using mechanical equipment.

Excavation (C.Y.): The removal and transporting of in situ soils on the construction site using mechanical equipment.

Embankment (C.Y.): The placing and compaction of soil on the construction site using mechanical equipment.

Drainage Structures/Storm Sewers:

Storm Sewers (L.F.): The excavation, installation, and backfilling of drainage or sewer pipes including structures.

Box Culverts (C.Y.): The excavation, forming, reinforcing, pouring, finishing, stripping, and backfilling of cast in place concrete box culverts on the construction site. If using pre-cast units, then the units should be changed to L.F. and appropriate production rates substituted.

Inlets & manholes (Each): The installation of pre-manufactured inlets manholes for drainage or sewer systems. Time is included in Pipe.

Bridge Structures:

(Note: The production rates on several items appear low since they must include time for the total scope of activities necessary to complete an item.)

Cofferdams (S.Y.): The installation, dewatering and minor excavation associated with building a cofferdam system for a bridge construction site.

Sheet Piling (S.F.): The installation of sheeting for retaining walls and deep excavations. Do not add to cofferdams.

Piling (L.F.): The installation of piling for bridge foundations.

Footings (C.Y.): The layout, forming, reinforcing, placing, curing and removing forms for reinforced concrete bridge footings.

Columns, Caps & Bents (C.Y.): The layout, forming, reinforcing, placing, curing and removing forms for reinforced concrete bridge columns, caps and bents.

Wingwalls (S.Y.): The layout, forming, reinforcing, placing, curing and removing forms for reinforced concrete wingwalls for bridges.

Bridge deck (total depth)(C.Y.): The layout, forming, reinforcing, placing, curing and removing forms for reinforced concrete bridge decks. The production rates have been set to include time for all components of the deck, including precast plank under slab, thus the full depth of the deck is used to calculate quantity.

Bridge curbs/walks (L.F.): The layout, forming, reinforcing, placing, curing and removing forms for reinforced concrete bridge curbs and walkways.

Bridge handrails (L.F.): The layout, forming, reinforcing, placing, curing and removing forms for cast in place reinforced concrete bridge handrails.

Retaining walls (S.F.): The layout, excavation, forming, reinforcing, placing, curing and removing forms for cast in place reinforced concrete retaining walls. The time for precast proprietary wall systems is included in embankment.

Base Preparations:

Stabilized Roadbed (S.Y.): The placement, mixing and compaction operations involved in the stabilization of subgrade soils.

Base material (S.Y.): The placement, mixing and compaction of flexible base material.

Hot mix asphalt base (Ton): The laydown and compaction of hot mix asphalt concrete base course material. The production rates are taken from the graph for plant mix.

Curb and gutter (L.F.): The layout and construction of new roadway curb and gutter using automated equipment or forms and hand finish.

Concrete pavement repair (S.Y.): The removal and replacement of sections of unsatisfactory or failed Portland cement concrete pavement.

Milling/planning (S.Y.): The removal of the surface level of existing pavements using automated milling or planning equipment.

Plant mixed surfaces (Ton): The laydown and compaction of hot mix asphalt concrete surface course material. The production rate is taken from the graph for Plant Mix.

Asphalt Friction Course (1 course) (Ton): The laydown and compaction of asphalt concrete friction course material.

Cement Concrete paving (Rebar + curing) (S.Y.): The layout, reinforcing, placing, curing and jointing of Portland cement concrete pavement.

Precast traffic barriers (L.F.): The layout and installation of precast concrete traffic barriers. If barriers are to be cast in place, then the units should be changed to C.Y. and the production rates adjusted accordingly.

Permanent Signing and Traffic Signals:

Small Signs (Each): The installation of small highway information and warning signs mounted on metal posts driven into soil along a highway.

Overhead signs (Each): The installation of large highway information and directional signs mounted on metal frames over a highway. It is assumed that the footings and poles that support
The frames are already in place.

Major traffic signals (Each): The installation of automated traffic signals and their support systems at highway intersections.

Pavement markings (L.F.): The application of paint or thermoplastic pavement marking materials to a highway pavement.

Raised Pavement Markers (RPM) (Ea.): The application of adhesive and raise pavement markers.

Seeding (S.Y.): The seeding of grasses, application of fertilizer and mulch, and cutting into soil.

Final clean-up (Sta.): The removal of debris, dirt and other construction materials from a highway pavement and adjacent right of way at the end of a construction project. The time for this activity is included in "General Time".

Structure demolition (WKDAYS): The demolition and removal of the materials for large structures (multi-story buildings, retaining walls, towers underground tanks, etc.) from the right of way of new construction projects.

Remove old structures (small) (WKDAYS): The demolition and removal of the materials for small structures (Single-story wood buildings, storage sheds, fences, road signs,

etc.) from the right of way of new construction projects. Time for this is included in clearing and Grubbing.

Bridge demolition (WKDAYS): The demolition and removal of all materials for an existing bridge structure and related appurtenances (approaches, gates, signals, etc.).

Erect temporary bridge (WKDAYS): The layout and construction of a temporary bridge structure and related appurtenances for a highway construction project.

Remove temporary bridges (WKDAYS): The demolition and removal of all materials for a temporary bridges structure and related appurtenances for a highway construction project.

PRODUCTION RATES

The following Excel spreadsheet link is a compilation of statewide rates ranging from low to high. Although this list is extensive, it may not include a production rate relevant to a particular project. Other sources may need to be perused to achieve the required rates for a particular scope of work within that contract.

Production Rates (Statewide)

RESOLUTION NO. 06-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CITY PURCHASING POLICY BY PROVIDING AN ETHICS STATEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the purpose of the City Purchasing Policy to maximize the purchasing value of City funds in procurement; and

WHEREAS, it is also the purpose of the City Purchasing Policy to provide safeguards and ethical standards to maintain a procurement system of quality and integrity; and

WHEREAS, as a requirement to receive certain federal grant funds, specific ethics provisions must be added to the existing purchasing policy; and

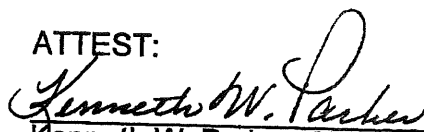
WHEREAS, these safeguards and standards are to be codified in a written ethics statement, and added to the City Purchasing Policy as Section 20- Ethics Statement.

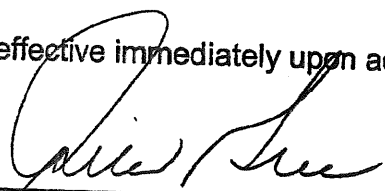
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City of Port Orange hereby amends the City Purchasing Policy as attached hereto as Exhibit "A", until amended by resolution, adding Section 20, Ethics Statement.

Section 2. This resolution shall become effective immediately upon adoption.

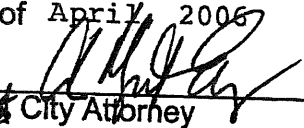
ATTEST:


Kenneth W. Parker, City Manager


MAYOR ALLEN GREEN

Adopted on the 25 day of April, 2006

Reviewed and Approved:


City Attorney

C:\Legal\RES\adopt ethics stmt for purchasing policy.wpd

SECTION 20

ETHICS STATEMENT

The purpose of the ethics statement is to maximize the purchasing value of City funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. It is to convey the basic principles of business conduct expected of all employees in order to safeguard the reputation of the City and its employees. The policy is general in nature and not intended to be all-inclusive. The fact that a certain action or activity is not mentioned as improper does not infer that it is either permissible or proper.

1. All acquisitions must comply with the City of Port Orange Policies and Procedures and Florida Statutes Chapter 287, and when federal funds are financing the acquisition, every purchase order or contract shall contain any clauses required by federal law, and applicable provisions of 24 CFR 85.36.
2. The City of Port Orange encourages all businesses, whether they be a small business, minority and women owned businesses to participate in the acquisition process with respect to doing business with the City and as outlined in 24 CFR 85.36.
3. Acceptance of gifts or gratuities from a contract grantee, other than advertising novelties of nominal value by employees participating in the selection or administration of the contract, is strictly prohibited. No employee shall become obligated to any vendor and shall not conduct any City transaction from which he/she may personally benefit.
4. No employee of the city shall contract with any entity or person transacting business with the city whereby the employee may derive income or benefits other than those provided as remuneration from the city for his employment except when the city council has made a prior determination that such dealings are in the best interest of the city.
5. No city employee, officer or agent shall participate in the selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the participating 1) employee, officer or agent, 2) a member of his immediate family, 3) partner, or 4) organization that employs the employee has a financial or other interest in the contract grantee. Disciplinary action resulting in termination of the purchase, contract and/or employee, could result.
6. No contract, purchase or group of requisitions shall be subdivided to avoid bid, quotation, or approval requirements.
7. It is unlawful for a City officer or employee to order the purchase of any materials, supplies, equipment and/or contractual services, or make any contract other

than through the Coordinator of Purchasing without prior written authority or as specifically delegated herein. Any purchase, order or contract that is made contrary to these provisions shall not be approved and shall not bind the City as defined in the City's Purchasing Ordinance.

8. In cases of extreme emergency, an exception to the above policy may be made as outlined in Section 12 of the City's Purchasing Policies and Procedures and/or enacted by City Manager and ratified by the City Council.

9. The City of Port Orange follows Florida Statutes 112.3143 with respect to members of the City Council voting on awards for the purchases of equipment, goods and/or services where a conflict of interest may occur.

10. When a purchase is financed with federal funds, the City's local preferences ordinance will not be applicable if inconsistent with 24 CFR 85.36.

11. The City of Port Orange currently solicits bids by advertising both in the Daytona Beach News Journal a local newspaper, and on the Internet using Onvia (Demandstar) thereby ensuring that an open and competitive process has been followed.

12. When professional services such as architects, engineers, landscape architects and surveying firms, are required, the City follows the CCNA process, thereby adhering to Florida Statutes 287.055 as outlined in Section 13 of the City's Purchasing Policies and Procedures Manual. When using this type of process, or when only one bid or proposal is received, cost analyses are normally obtained either using current market pricing or advise from an Architectural/Engineering firm under contract with the City.

13. Procedures to resolve procurement protests are outlined in Section 14 of the City's Purchasing Policies and Procedures Manual.

Ethics statement

Revised 02/09/15
Supersedes 02/01/95
Effective 10/1/93

CHAPTER 1
GENERAL ADMINISTRATION
POLICY1 – 23

FINAL PAYMENTS ON CONSTRUCTION PROJECTS

The purpose of this directive is to set forth City policy on a final or one-time payment for all City construction projects.

STATEMENT OF POLICY

Applicability

The provisions of this directive apply to all Departments within the City.

In General

Processing a final (more than 90% complete) or a one-time payment on all construction type projects is the specific responsibility of the Project Manager. For this policy "construction projects" are defined as all contracted construction of buildings and improvements greater than \$10,000. This also includes City Cost Participation Projects. To ensure the City receives protection from all liability exposure, the subsequent procedures must be followed:

Procedures

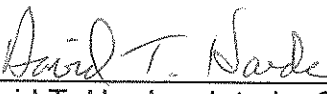
Before final payment can be made, the Purchasing Manager must have the following from the Prime Contractor and/or Project Manager:

1. A memorandum or letter from the Project Manager or Engineer that all punch list items have been completed.
2. Consent to Final Payment from the Surety, if a bonded project.
3. Final lien waiver or a release form from all known subcontractors (listing with the bid documents), with particular emphasis on the ones who have filed "Notice to Owners" with the City. (Check with the Purchasing Manager and/or City Clerk's Office as to which subcontractors have filed "Notice to Owner's" with the City.)
4. Receipt and Release form and/or a Final Waiver of Lien signed by the Prime Contractor, and in the case of a cost participation project, a Final Waiver of Lien from the Developer or co-participator.

5. Final Cost Participation should not be made until construction is complete, as verified by an Engineer, and all requested documentation has been submitted to the City. (See City Cost Participation Step-by-Step Procedure.)

If no changes are being made to the original approved contract, all the above procedures have been complied with, and all final paperwork has been forwarded to the Purchasing Manager, then final payment shall be made in the normal course of business.

If either an additive or deductive final contract change order is necessary, and the Purchasing Manager has received all paperwork, then an Agenda Item Form shall be prepared by the responsible department for City Council approval. Upon approval by the City Council, the copy of the purchase order should be signed by the respective Department Head and forwarded to the Finance Department with the final pay request.



David T. Harden, Interim City Manager

Effective Date: 08/15/2013

Revised: 06-01-15

Chapter 1

General Administrative

Policy 1-48

Title: PURCHASE REQUISITION APPROVAL AND PURCHASE ORDER ISSUANCE

Policy: A significant investment occurs annually in the procurement of physical inventory, supplies, services, and capital equipment. To insure purchase order issuance is in compliance with the City's Purchasing Policy the Purchase Order generation system should not allow the same user to create and approve a purchase order.

Purpose: To outline the actions to be taken for security of the purchase order issuance process.

Scope: This procedure applies to issuance of all purchase orders issued for the purchase of all inventory items, supplies, services, and capital equipment for all departments within the City.

Responsibilities:

All personnel that require a product or service must complete purchase requisitions specifying items to be purchased and obtain required approvals through the automated purchase order generation system.

Department Heads are responsible for approving all purchase requisitions for the procurement of physical inventory, supplies, services, and capital equipment charged to their department. The Department Head may designate the Assistant Department Head or Supervisor to approve on their behalf upon written notification to the Information Technology and Finance departments.

Information Technology (IT) Department is responsible for maintaining the Purchase Order generation system in compliance with this policy. IT is also responsible for approving any purchase requisition requesting the purchase of computer software, computer equipment or computer services.

Accounting Division of Finance is responsible for approving all purchase requisitions for the procurement of physical inventory, supplies, services, and capital equipment verifying adequate budget for the purchase and that the purchase is charged to the appropriate General Ledger account.

Purchasing is responsible for approving all purchase requisitions for the procurement of physical inventory, supplies, services, and capital equipment verifying that the requested purchase complies with all purchasing policy and procedures. Purchasing is also responsible for issuing the purchase order after all required approvals are obtained. The Purchasing staff will not be granted purchase requisition approval rights for any approval level other than the Purchasing approval and will not have security access to change any approval level security rights.

Finance Director or designee is responsible for maintaining the purchase requisition approval level security access but will not have security access to generate a Purchase order.

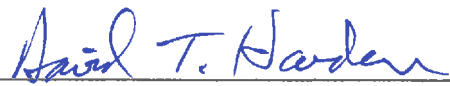
City Manager is responsible for approving the procurement of physical inventory, supplies, services, and capital equipment with a cost equal to or greater than \$25,000.

Procedure:

1.0 REQUISITION ENTRY, APPROVAL AND PURCHASE ORDER ISSUANCE

1.1 The requisitions approval process is established in a hierarchal process as follows:

- Requisition entry
- IT approval for computer software, computer equipment or computer services
- Department Head Approval
- Budget/Finance approval
- Purchasing approval
- City Manager approval for requisition equal to or greater than \$25,000
- Purchase Order issuance if all applicable approvals are obtained.



David T. Harden, Interim City Manager
Date: 6/2/15

PORT ORANGE FINANCE DEPARTMENT
PORT ORANGE, FLORIDA



POLICY AND PROCEDURE DIRECTIVE

TITLE: Intra-Department Budget Transfers
NUMBER: 1-54
EFFECTIVE: 07-6-2015
SUPERSEDES: N/A
REVISED: 07-6-2015

PURPOSE

The purpose of this policy is to outline the process for intra-department budget transfers during the fiscal year. It exists to ensure the city follows city code, state law and best financial practices. This procedure does not cover inter-department or inter-fund transfers, or budget amendments that decrease or increase the overall budget of the City, fund or department.

DISCUSSION

Intra-department budget transfers are defined as the movement of unencumbered appropriations (monies that aren't reserved for known purchases) within a single department and fund.

POLICY

City Code Chapter 2, Article VI, Division 3, Sec. 2-299(d) *Transfer of Appropriations* state:

At any time during the fiscal year the city manager may transfer part or all of any unencumbered appropriations balance among programs within a department. The city council may by resolution transfer part or all of any unencumbered appropriation balance from one department to another.

The same section in the City Code states further in paragraph (e) *Limitations; Effective Date*:

No appropriation for debt service may be reduced or transferred. No appropriation may be reduced below that amount required by law to be appropriated, if any. No appropriation may be reduced below the amount of the unencumbered balance...

As with most duties attributed to the City Manager in the Code of Ordinances and the City Charter, the City recognizes that these responsibilities can be delegated to other staff by the City Manager.

RESPONSIBILITIES

1. User departments are responsible for:
 - a. Creating budget transfer requests
2. Finance staff is responsible for checking transfers to ensure:
 - a. Sufficient unencumbered funds exist such that executing the transfer will not result in a negative amount in the line item where the funds are being moved from.
 - b. The "transfer from" amount and the "transfer to" amounts are equal.
 - c. The transfers do not move money between funds or departments
 - d. The transfers do not move money from debt service to any other expenditure type.
3. The Finance Director is responsible for:
 - a. Ensuring that finance staff have checked requests as identified in #2 (above).
 - b. Approving or denying the intra-department budget transfers up to and including \$999.
 - c. Forwarding budget transfers to the City Manager that exceeds \$999 (i.e., \$1,000 or more).
4. The City Manager is responsible for:
 - a. Approving or denying budget transfers of \$1,000 or more.

PROCEDURE

1. User departments initiate budget transfer requests via email or budget transfer request form and send the request to the Finance Department.
2. Finance staff reviews budget transfers to ensure:
 - a. Sufficient unencumbered funds exist such that executing the transfer will not result in a negative amount in the line item where the funds are being moved from.
 - b. The "transfer from" amount and the "transfer to" amounts are equal.
 - c. The transfers do not move money between funds or departments
 - d. The transfers do not move money from debt service to any other expenditure type.
3. If Finance staff finds a violation of policy or procedure, they:
 - a. Rework the budget transfer with the user department so that it complies with policy and/or procedure.
 - b. Deny the budget transfer request, or
 - c. Process the budget transfer through a budget resolution process (not covered under this procedure).
4. If no issues are found with the budget transfer, finance staff attaches appropriate documentation to the budget request form or email request (i.e., print screens, line item balances, analysis, etc.).

5. Finance staff assigns the next sequential budget transfer number to the budget transfer.
6. Finance staff logs the transfer on the shared drive file including: a brief description of the transfer, date of transfer, name of staff performing transfer and any other relevant comments.
7. Finance staff enters the budget transfer into the accounting system, prints an "adjustment edit list" and reviews it for accuracy.
8. If the entry is correct, finance staff attaches the original budget request and backup documentation to the adjustment edit list.
9. Finance staff stamps the adjustment edit list with the budget approval stamp and processing stamp; then initials the adjustment edit list.
10. Finance staff provides all documentation to the Finance Director or designee.
11. Finance Director or designee reviews the budget transfer to ensure it does not violate intra-department transfer rules as described above.
 - a. If the budget transfer violates policy or procedure, the Finance Director returns the request to finance staff to rework and/or notify the requesting department of denial.
 - b. If the budget transfer does not violate policy or procedure and is \$1,000 or over, the Finance Director forwards the transfer to the City Manager.
 - i. The City Manager or designee reviews transfers over \$1,000 to ensure it does not violate policy or procedure.
 1. If the transfer violates policy or procedure, the City Manager denies the request and returns it to the Finance Director.
 2. If the transfer does not violate policy or procedure, the City Manager may approve the transfer and return it to the Finance Department.
12. Once the transfer is approved by the Finance Director, City Manager, or their designee, finance staff updates the budget transfer in the accounting system.
13. Finance staff updates the budget transfer log and files the budget transfer in the "Transfer" filing cabinet.

Approved:


David T. Harden, Interim City Manager


Date



BID REQUEST FORM (ITB, RFP, RFSQ, ITN)

(# will be assigned by Purchasing Division)

Assigned Purchasing Lead: _____

Section 1: ITB/RFP/RFSQ/ITN Name, Scope, Type

Project name:

General scope of project:

Type of project:

☐ Bid ☐ RFP ☐ RFSQ Design/Professional Services (engineering, architect, surveying, landscape) ☐ ITN

☐ Capital ☐ Non-Capital

Section 2: ITB/RFP/RFSQ/ITN Information

Requested by:

Department:

Special Legal Ad:

☐ Y or ☐ N *Per 180.24FS, see below *Section 12: Solicitation FAQ*

Estimated amount:

Bid Bond:

☐ Y or ☐ N

Grant funded:

☐ Y or ☐ N (If yes, list date & requirements)

Deadline Date:

Type / Special Requirements:

Fund Account:

Project#:

City Project Manager:

Contract Administrator:

Project Inspector:

Blueprint provided by:

Engineer of Record:

Section 3: List of Evaluation Committee Members RFP/RFSQ/ITN (Minimum 3)

Committee Member 1:

Committee Member 2:

Committee Member 3:

Committee Member 4:

Committee Member 5:

Section 4: Suggested ITB/RFP/RFSQ/ITN Dates

All dates are subject to scheduling and availability

Release date priority:	☐ High ☐ Medium ☐ Low	Suggested Date:
Pre-Bid date:	Site Visit: ☐ Y or ☐ N Mandatory: ☐ Y or ☐ N	
Due date/opening:		
Committee dates:		
Delivery/Completion:		
Award/DF to Council:	Note: funding source must be listed on DF	

Section 5: Responsible for Creating Details/Specifications/Scope of Work

☐ Project Manager ☐ Project Engineer/Architect ☐ Other _____ ☐ Assistance from Purchasing*

* Purchasing distributes and advertises all Solicitations and reviews specifications. If the Project Manager, Engineer or Architect prepares the specifications, ensure Purchasing receives a **WORD** copy and approves the draft.

Section 6: Contract Type

**** Discuss with City Attorney prior to bidding the project to ensure the contract is in the bid document ****

Contract Type: ☐ Standard services (Supplies/Services) ☐ EJCDC (Engineers Joint Contract Document Committee) (Site/Structures & Design Build) ☐ AIA (American Institute of Architects) (Building construction)

Contract Term:		
Renewal Options:		
(Days) Substantial Completion	(Days) Final Completion	

P&P Bond: ☐ Y or ☐ N *Payment and Performance Bonds are required for construction projects on public property

* If the project engineer is responsible for contract administration and project inspection services, ensure the contract with the engineer provides for that service. If not, the Engineer's Contract needs to be approved by the City Manager.

Section 7: Suggested Bidder's List (include email address of potential bidder)

Bidder:	
Bidder:	
Bidder:	
Bidder:	
Bidder:	
Bidder:	
Bidder:	

Section 8: Director/Department Head Approval

☐ Approved ☐ Rejected Date: _____ X _____

* Upon final approval in BoardSync, screenprint of Finance, Legal, and City Manager Approvals will be attached to this form.

Section 9: Finance Review

☐ Approved ☐ Rejected Date: _____ X _____

Comments: _____

Section 10: Legal Review

☐ Approved ☐ Rejected Date: _____ X _____

Comments: _____

Section 11: City Manager Review

☐ Approved ☐ Rejected Date: _____ X _____

Section 12: Solicitation FAQ

- **Who fills out the Bid Request Form?**

Sections 1-7 are to be completed by the Project Manager/Director. Director/Department Head signs section 8.

- **When to use this form**

When purchases exceed \$25,000 and does not fall under the exclusions listed in City Code Sec 2-267. Ex: (Sole source, piggyback, utilities, travel, postage, registration fees, etc.)

- **How do I submit this form?**

After Director/Department Head signs approval, initiate an agenda item on BoardSync under Bid Requests and upload this completed form. After uploading to BoardSync, forward the original signed form to the Purchasing Division.

- **How early should I plan for a Bid/RFP/RFSQ/ITN?**

Departments should allow for at least 90 days from *receipt of bid specifications* to *opening* (120 days for council award date). An additional 30-60 days should be allowed for RFPs, RFSQs, and ITNs.

- **Advertising:** Florida Statutes mandate that Capital Projects with a projected cost of under \$200,000 shall be publicly advertised for a minimum of ten (10) days; over \$200,000 Twenty-one (21) days and over \$500,000 a minimum of thirty (30) days prior to bids being opened.

Per 180.24FS, public utility projects require additional advertising: two (2) consecutive ads *or* postings in three (3) conspicuous places around city hall, one (1) of which shall be the door of city hall. 180.07FS Examples: solicitations for jails, airports, hospitals, golf courses, reservoirs, pump stations, pipelines, & water/reclaim/sewage systems.

- **Distribution/Release:** The City is currently using Demand Star www.demandstar.com for releasing bid documents/addenda on the internet and the Daytona Beach News Journal to release the legal advertisement.
- **Specifications:** Document specifications should be sent to the Purchasing Agent and Purchasing Manager in one (1) MS WORD file format.
- **One envelope Bid process:** One envelope shall be submitted. The envelope contains required forms, technical and price information. The envelope from all timely bidders will be opened and read aloud the same day.
- **CCNA:** The City of Port Orange is also governed by Florida Statutes 287.055 the Consultants Competitive Negotiations Act, as the method of selecting architects, engineers, land surveyors and landscape architects.
- **Design-Build:** The City has written and enacted a set of Design-Build Policies and Procedures which sets forth very specific requirements the City must use for a design-build type of bid or contract. This was done to comply with Florida Statutes, Chapter 287.055 as amended; Consultants Competitive Negotiation Act. Public announcement/advertisement shall be made:
If planning or study activity for professional services exceeds \$35K:
If basic construction costs estimated by the agency exceeds \$325K:
- **Grants:** Grant Money Bids and Projects also have their own set of governing laws and regulations which require the City's compliance. The compliance with these laws is strictly the Project Manager's responsibility. The Project Manager must familiarize himself/herself with each and every grant to ensure that the City not only complies with those rules but fulfills every requirement that those grants contain so as not to forfeit the money that they bring.
- **Bid Bonds; Performance & Materials Bonds:** When Bid bond/deposits are required they are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is required, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds are required for construction projects on public property in the amount equal to one hundred percent (100%) of the total contract amount. Payment and Performance Bonds must also be recorded in the Office of the Clerk of the Circuit Court, Volusia County, Florida. All bonds are advertised in the Invitation to Bid which appears in the newspaper.
- **Public Entity Crimes Form:** Every acquisition with Federal funds equal to or greater than \$10,000.00 and all formal solicitations must have a signed, notarized Public Entity Crimes Form.
- **Drug Free Tie Bid Form:** The Drug Free Tie Bid Preference Form is in accordance with Section 287.087, Florida Statutes and became law in January 1991. It takes precedence in tie bids.



SINGLE/SOLE SOURCE JUSTIFICATION

(Waiver of Competitive Quotes / Bids)

DATE: _____

Selected Vendor: _____ Vendor # in Naviline: _____

Vendor E-Mail: _____

Amount requested for current fiscal year expenditure with above Vendor: \$ _____

Department: _____ Fiscal Year: _____

City Contact Name: _____ Phone Ext: _____

Brief Description of Purchase: _____

(Section I) SOURCE JUSTIFICATION – Check boxes as appropriate:

Part A Award to SINGLE SOURCE. *(Check one) * Attach a departmental memorandum (Justification of Request)*

- ☐ Service Agreements and/or repair services/parts unavailable from any other source except original equipment manufacturer or their designated servicing dealer.

*** Attach manufacturer's written certification that item is OEM.**

*** Attach the manufacturer's (not distributor's) written certification that no other distributor exists.**

- ☐ Compatibility of equipment or supplies required. List equipment with which purchase will be used:
Model # _____ Serial # _____ Manufacturer _____

- ☐ Upgrade to existing software. Available only from the producer of this software who sells on direct basis only.

A. Attach the producer's written certification stating sold on direct basis only and no other distributor exists.

- ☐ Used or demonstration equipment available at a lower-than-new cost. (Provide copy of quote showing used vs. new pricing.)

- ☐ Other. (Explain in Section II)

Part B Award to SOLE SOURCE. *(Check box below) * Attach a departmental memorandum (Justification of Request)*

- ☐ Patent, copyright or unique design restrictions ***Attach verification from Manufacturer***
- ☐ Proprietary rights in technical data and/or product formulations (e.g. cleaning compounds, lubricating oils, paint, etc.) which can only be determined through extensive laboratory analysis and examination ***Attach verification from Manufacturer***
- ☐ Only producer, such as utility supplier or construction material supplier, that will meet the specialized needs of the department or perform the intended function ***Attach verification from Manufacturer***
- ☐ Only known source in the market. (Explain in Section II technical or other reasons why similar or like items are not available.)

(Section II) **EXPLANATION.** *(Use additional sheet if needed)*

(Section III) **AUTHORIZATION/APPROVALS**

DEPARTMENT APPROVAL:

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the service or material described in this single/sole source justification be authorized as single/sole source for the service or material. **Purchasing approval required prior to submitting for City Manager approval.**

Department Head Approval (Print Name): _____

Department Head Approval Signature: _____ Date: _____

Software or hardware purchases only:

IT Approval (Print Name): _____

IT Approval Signature: _____ Date: _____

PURCHASING APPROVAL:

Single/Sole source requests shall be posted on Quote Wire for seven (7) business days by Purchasing. Prospective vendors shall provide information regarding their ability to supply the commodities or contractual services described. If no complaints or protests are received from vendors after seven days of posting, the single/sole source shall be deemed a valid request. (Result of Quote Wire post attached.) **Purchasing Manager approval required prior to submitting for City Manager approval.**

Quote Wire #: _____ Date Posted: _____ Complaints/Protest (Yes/No) _____

Posted by (Print Name): _____

Purchasing Manager Approval Signature: _____ Date: _____
Diana M. Fye, Purchasing Manager

CITY MANAGER APPROVAL:

City Manager Approval: _____ Date: _____
M.H. Johansson, City Manager



CITY OF PORT ORANGE

Waiver of Formal Bidding Requirements Over \$25,000

City Code Section 2-267

Department:

Vendor:	
Department:	Click here to enter text.
Commodity or Service	
Fiscal Year:	
Amount of Expenditure:	
Type of Purchase (City Code 2-267)	

Purchasing: *(attached verification)*

- ☐ Sole Source Approval.
- ☐ Piggyback Approval.
- ☐ Other: _____

Department Head:	Click here to enter text.
Department Head's Signature:	
Date Signed:	

Purchasing Manager:	
Purchasing Manager's Signature:	
Date Signed:	

City Manager:	
City Manager's Signature:	
Date Signed:	

*Please note, the waiver of formal bidding requirements does not exempt the bidder from meeting city contract requirements.

**WAIVER OF REQUIREMENT FOR PAYMENT AND PERFORMANCE BOND
FOR SERVICES NOT TO EXCEED \$25,000.00**

Section 255.05(1), Florida Statutes, requires that any person entering into a contract for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in Florida. Section 255.05(1)(d) provides that, at the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, a person entering into such contract that is for \$200,000.00 or less may be exempted from executing the payment and performance bond.

On May 28, 2013, the City of Port Orange adopted Resolution No. 13-24 which authorizes the City Manager to waive any and all payment and performance bond requirements on City projects when the work to be completed is estimated to be \$25,000.00 or less, or an amount consistent with the Code of Ordinances, Section 2-270, Informal bid procedures, as amended from time to time.

Department Requesting Waiver: _____

Vendor: _____

Description of Services: _____

Amount of Services: \$ _____ *(Documentation Attached)*

Original Contract Amount: \$ _____

Amendments/Addendums/Change Orders: \$ _____

Contract Amount Prior to Waiver Request: \$ _____

Justification for Waiver: _____

Authorized Signature: _____

Date Signed: _____

=====

☐ Approved

☐ Denied

Gregory A. Kisela, City Manager

Date Signed: _____

CHANGE ORDER NO. ____
 To _____ dated _____
 _____, Contractor

Project: _____

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$ _____	Original Contract Times Substantial Completion: ____ days Final Completion ____ days
Net changes from previous Change Order: No. ____: \$ _____	Changes in contract time from previous Change Orders: No. ____: ____ days ____ days
Contract Price prior to this Change Order: \$ _____	Contract Completion Date prior to this Change Order: Final Completion: ____ date
Net Increase (decrease) of this Change Order No. ____: \$ _____	Changes in contract time requested this Change Order No. ____: (Requires Council Approval) ____ days
Contract Price with all approved Change Orders: \$ _____	Contract Times with all approved Change Orders: Final Completion: _____ date

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the _____ entered into by and between the parties on _____.
- II. REQUIRED CHANGES: To provide for _____. No goods shall be delivered nor services commenced here under until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION:
Changes in scope require Council approval. Is this a scope change? _____
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the _____ subject to a limit up to but not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:

Department Project Manager

ACCEPTED BY:

Contractor

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

RECOMMENDED BY:

City's Representative

RECOMMENDED BY:

Engineer of Record

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

City Manager

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Printed Name: Allen Green
Title: Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____

PURCHASE ORDER CHECKLIST:

- ☐ Quote(s)
 - ☐ Up to \$2,500.00 one (1) verbal quote & document in requisition comments. The purchasing department suggests obtaining a written quote to attach to the requisition.
 - ☐ \$2,500 - \$5,000 two (2) verbal quotes & document in requisition comments or input into requisition quote module. Purchasing suggests obtaining written quotes and attaching the quotes to the requisition.
 - ☐ More than \$5,000.00 up to and including \$25,000.00, three (3) written quotes
 - ☐ More than \$25,000.00 require a competitive solicitation unless otherwise exempt
- ☐ Completed Vendor Application and Agreement on file with City
- ☐ Start date (applies to services only)
- ☐ Finish/Delivery date
- ☐ Quantity
- ☐ Cost code
- ☐ Amount
- ☐ Description of goods/services
- ☐ Scope of Work to include:
 - ☐ Maintenance
 - ☐ Repair
 - ☐ Replacement
 - ☐ Materials
 - ☐ Equipment
 - ☐ Labor
 - ☐ Parts
 - ☐ Supplies
 - ☐ Other
- ☐ Permits and/or licenses required, if applicable
- ☐ Delivery address
- ☐ Insurance Table (Vendor insurance requirements determined by Department Head)
- ☐ Other supplementary documentation, as necessary

EXHIBIT _____ INSURANCE TABLE

Standard Insurance Requirements			
	Insurance	Standards	Comments
☐	Workers' Compensation <u>Additional Coverage:</u>	<u>Limits:</u> Coverage A – Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	☐ If Agreement 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.
☐	Workers' Compensation Officer(s) Exemption	<u>Documentation Required for Exemption: (must be attached to Purchase Order)</u> ☐ Florida Department of Financial Services business activities on exemption detail page. ☐ Verification of Workers' Compensation for employee(s) and subcontractor(s). ☐ List of all subcontractor(s) utilized for work provided by this Purchase Order.	
☐	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	☐ When work is on or under Railroad rights of way or properties, the Vendor shall take out and maintain during the life of the Agreement, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☐	Comprehensive: Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	<u>Limits:</u> Auto Liability Bodily Injury: \$200,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage

Additional Insurance Requirements

☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of agreement. "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 minimum	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	Agents acting on behalf of the City.
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	Department Head recommends waiver of Payment and Performance Bond for work under \$25,000.00.		
☐	Department Head waives Insurance, unless otherwise required by law.		



CITY OF PORT ORANGE

Vendor Application and Agreement

City of Port Orange

Attn: Purchasing Division

(386) 506-5718

PurchDiv@port-orange.org

1000 City Center Circle

Port Orange, FL 32129

Please complete the following information:

Name of Individual or Business: _____

Payment Remit to Name: _____

Contact Person and Title: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Taxpayer Identification Number (TIN): _____

Tax Classification:

☐ Individual/Sole Proprietor/Single Member LLC

☐ Partnership

☐ Other (Explain) _____

☐ S Corporation

☐ C Corporation

☐ Trust/Estate

Current W-9 Attached (Required) ☐ Yes

Type of Commodity/Services _____

Does your company accept Purchasing Cards (i.e. Visa)? ☐ Yes ☐ No

Permanent Address:

Address _____

City _____ State _____ Zip Code _____

Remit to Address (if different from above):

Address _____

City _____ State _____ Zip Code _____

Please inform the Purchasing Division of all address, contact information and insurance changes.

PURCHASING GENERAL TERMS AND CONDITIONS

The City objects in advance to the inclusion of any additional terms and conditions proposed by the vendor in its acceptance or acknowledgement of any order. The inclusion of terms and conditions, or reference thereto, by the vendor shall be of no significance, shall not be binding on the City, and the City's acceptance of the vendor's goods or services shall not be deemed as acceptance of such terms and conditions. The terms and conditions contained in a Supplemental Document, as defined hereinafter, to the Purchase Order shall only control if and when a Supplemental Document to the Purchase Order is signed by the City Manager or Mayor. The terms and conditions contained in a Supplemental Document fully executed by the City Manager or Mayor are incorporated herein by this reference. **In the event that a vendor contracts with the City via a Supplemental Document and there is a conflict between the general terms and conditions set forth herein and the Supplemental Document, the terms and conditions of the Supplemental Document shall control. Supplemental Document shall be defined as to include invitation to bid, proposal, quote, and contract.** Unless otherwise stated on the face of a purchase order, the following terms and conditions shall apply:

- 1. ACCEPTANCE.** The Purchase Order ("PO") issued by the City of Port Orange ("the City") and made apart hereof by reference, becomes a binding contract, subject to the terms and conditions set forth herein, upon confirmation of the PO by the Vendor; or by the commencement of the work set forth in the PO; or by acceptance of payment for the work set forth in the PO. Any change, addition or modification to the terms set forth on the face of the PO must be agreed to in writing by the City.
- 2. ASSIGNMENT.** Neither the PO nor any interest under such PO may be assigned by Vendor without the prior written consent of City.
- 3. CHANGES.** City shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the costs or the time required for Vendor's required performance, an equitable adjustment will be made and the PO will be modified, in writing, accordingly.
- 4. COMPLIANCE WITH LAWS.** Vendor warrants that all goods and services applicable under the PO will have been produced, sold, delivered and furnished in strict compliance with all applicable Federal and State laws and regulations. Vendor shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are incorporated by this reference.
- 5. FREIGHT.** Vendor shall ensure that shipper complies with the shipping terms and instructions stated on the face of the PO. Failure to accurately follow the shipping terms and instructions as stated may result in one of the following: (i) a chargeback for any freight cost increase; or (ii) a chargeback for the full cost of the freight.
- 6. INSPECTION.**
 - a. All goods and/or services, purchased are subject to City's inspection, test and approval at destination, whether or not prior payments have been made or inspections have been performed by the City. All goods and/or services not in accordance with specifications may be rejected and held subject to shippers' orders. Shipper must pay all expenses, including freight both ways, on rejected goods.
 - b. If goods and/or services provided hereunder are rejected, in whole or in part by the City by reason of the Vendor's failure to comply with any of the terms, conditions and/or specifications contained herein and on the face of the PO, City, after notifying Vendor in writing may (i) return the rejected portion of such goods and/or services to Vendor at Vendor's expense or hold the same for such disposal as Vendor shall indicate, without invalidating the remainder of the PO; (ii) may reject the

entire shipment of goods and cancel the PO for any undelivered goods; or (iii) to cause Vendor to pay City promptly for expenses incurred in remedying the defective or nonconforming goods and/or services (including without limitation, the purchase of substitute (or functionally equivalent) goods and/or services), or to cause Vendor, at Vendor's expense, to expeditiously replace, upgrade, or repair any defective or rejected goods. If the option set forth in (i) is exercised, City may, in its discretion, reduce the quantity specified in the PO by the number of goods and/or services returned or rejected.

7. INDEMNIFICATION. The City reserves the right to add in a Supplemental Document, as previously defined to include invitation to bid, proposal, quote, and contract, the following clause or substantially similar language:

Vendor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by Vendor during the performance of the contract, whether direct, or indirect, and whether to any person or property to which the City or said parties may be subject, except that neither the Vendor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of City or any of its officers, agents, or employees.

8. INTELLECTUAL PROPERTY INDEMNIFICATION. Vendor warrants that there has been no violation or infringement of any copyright, trade name, trademark, patent or related intellectual property right, as a result of manufacturing, producing or selling the goods. Vendor further agrees to defend and indemnify City, its officers, agents and employees from all claims, expenses and liabilities arising from any actual or alleged intellectual property violation or infringement.

9. INSURANCE. THE DEPARTMENT HEAD HAS THE RIGHT TO WAIVE CERTAIN INSURANCE REQUIREMENTS AND SHALL PROVIDE THE WAIVER WITH THE REQUEST FOR PURCHASE ORDER. IF INSURANCE IS REQUIRED, THE FOLLOWING TERMS SHALL APPLY:

Vendor shall maintain all insurance as required by the City. Vendor shall provide to the City a certificate of insurance evidencing coverage and identifying the City as an additional insured. Failure of the Vendor to provide a certificate of insurance shall not relieve the Vendor from its responsibility to maintain the insurance coverage required by the City. The certificates shall clearly indicate that the Vendor has obtained insurance of the type, amount and classification required by the City. 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. For worker's compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the City as an additional insured for Workers' Compensation. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Vendor shall not commence work until the City has received a certificate or certificates of insurance and endorsements evidencing the required insurance. Vendor shall be solely responsible to provide the City the written original certificate, notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change. If insurance policies required are not provided to the City within thirty (30) days of the date requested, this Vendor Application and Agreement may be terminated.

10. INVOICING. Vendor agrees to submit an invoice with each shipment showing the PO number. All invoices should be issued to the City c/o Accounts Payable. The discount period of any cash discounts available to the City will commence on the date of the invoice. When freight is prepaid by Vendor, Vendor must show freight charges separately; before adding freight charges, and submit a copy of the freight bill with the invoice. No allowance will be made for boxes, reels, drums or other returnable containers unless so stated on the face of the PO and invoiced separately.

11. JURISDICTION AND VENUE. For any suit or proceeding to enforce the provisions of the PO, Vendor irrevocably consents to the jurisdiction of the Courts of the State of Florida. Furthermore, Vendor agrees that the PO will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida, without giving effect to its principles of conflicts of law.

12. OVERSHIPMENT. Quantities in excess of that shown on the face of the PO, if rejected, will be returned to Vendor at Vendor's risk and expense. Any excess quantities that City accepts will be billed at the PO price.

13. TERMINATION. City reserves the right to cancel all or any part of the PO without penalty.

14. TIME. Time is of the essence of the PO. The City reserves the right to cancel the PO (or any portion) without penalty in the event that deliveries are not made within the specified time, without liability for deliveries previously made and accepted by City.

15. TITLE. Unless the face of the PO provides for the City's assumption of ownership at the point of shipment, title to the goods purchased under the PO remains with the Vendor until such goods are off-loaded at the City facility or site specified on the face of the PO; provided, however, that in all cases, Vendor shall bear all risks of loss or damage in transit until such goods are delivered to City's facility or site and accepted by City or its designee.

16. WARRANTY. Vendor expressly warrants that all goods, services, workmanship, and title furnished and/or delivered pursuant to the PO and the terms and conditions stated herein will be free from defects in material, workmanship and title. Further Vendor warrants all goods and/or services will conform in all respects to all applicable specifications, drawings, and shall be fit for its intended use and service. All goods and/or services shall be new and not secondhand, of good quality and free from defects whether latent or patent in material or workmanship; all material and workmanship is warranted for a minimum of one (1) year from date of acceptance by City unless otherwise stipulated herein. Upon notification by City, Vendor shall correct any defect either by repair or replacement of the defective goods subject to the approval of the City, at Vendor's expense, provided that City's continued use of said defective goods pending repair or replacement shall not constitute a waiver by City under the PO. Further warrants that all goods and/or services covered by the PO meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-956) and its regulations in effect as of the date of the PO. These warranties shall survive acceptance of and payment for the goods and/or services furnished.

17. PAYMENT. Vendor agrees that payment will be made subject to "Local Government Prompt Payment Act", Sections 218.70-218.74, Florida Statutes, and in accordance with the City's policies and procedures, including but not limited to the requirement that Vendor shall be required to maintain a Current Vendor Application on file with the City. Prior to release of payment, Vendor shall be required to make current the vendor application on file with the City. For purposes set forth herein, a "Current Vendor Application" shall include the following: 1) an updated, completed, and executed current vendor application; 2) proof of current and updated insurance, if required; 3) updated and completed W-9, and 4) any other documentation that may be required by the City or otherwise required by law.

18. PUBLIC RECORDS COMPLIANCE. Vendor shall also be defined as to include the term set forth in Chapter 119.0701(1)(a), Florida Statutes. Vendor 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 records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the City.
- (d) Upon completion of the Contract, Vendor shall transfer to the City, at no cost, all public records in possession of the Vendor 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.
- (e) Comply with the City's request for records within a reasonable time. Failure to comply with the City's request for records within a reasonable time may subject Vendor to penalties set forth in Chapter 119.10, Florida Statutes.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT 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

19. SEVERABILITY. Vendor understands and agrees that if any provision, term, or condition stated herein or on the face of the PO is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Vendor and the City shall be construed and enforced as if the PO and this Vendor Application and Agreement did not contain the particular provision, term or condition held to be invalid.

20. COUNTERPARTS; FACSIMILE SIGNATURES. This Vendor Application and 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. Any party may effect the execution and delivery of this Vendor Application and Agreement by signing the same and sending a copy thereof to the City by facsimile, email or other electronic mean and so executed, shall have the full force and effect as an original.

*[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]
[SIGNATURES FOLLOW ON NEXT PAGE]*

ACKNOWLEDGEMENT AND AUTHORIZATION

Vendor acknowledges, authorizes, and agrees to the following:

1. The Vendor, as also defined to include principals and officers authorized to legally bind and obligate the Vendor for purposes set forth herein, does hereby certify under penalty of law that this Vendor Application and Agreement and all attachments provided are correct and were prepared under Vendor direction or supervision. Furthermore, Vendor is legally authorized to sign this Vendor Application and Agreement and by such execution does hereby approve and accept all of the terms and conditions contained herein.
2. The Vendor does hereby certify that Vendor has read and understands the Vendor Application and Agreement and Purchasing General Terms and Conditions contained herein.
3. The Vendor does hereby certify that no person (or concern) in connection with the Vendor, so far as is known, is disqualified from public contracting or purchasing from any agency of the federal government, State of Florida or City of Port Orange. Vendor further certifies that Vendor will notify the City of Port Orange should any person (or concern) in connection with the Vendor, so far as is known, becomes disqualified while Vendor contracts with the City of Port Orange.
4. Vendor acknowledges and agrees to be bound by the terms and conditions set forth in the Current Vendor Application form approved by the City Finance Director, posted on the City's website, www.port-orange.org, as of the date of issuance on the face of the PO and as otherwise referenced herein. Furthermore, it shall be the Vendor's responsibility to maintain a current Vendor Application, as defined in Section 16 of this Vendor Application and Agreement, on file with the City. **Vendor agrees that the City is not required to make payment until the current Vendor Application is filed.**

Name of Vendor: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Please return the completed Vendor Application and Agreement along with the required documentation to:

City of Port Orange

Attn: Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Or email: PurchDiv@port-orange.org

Any questions, please call the Purchasing Division at (386) 506-5718.



CITY OF PORT ORANGE PIGGYBACK AGREEMENT for Goods and Services

Base Contract:

- ☐ State of Florida
- ☐ Florida Sheriff's Association
- ☐ National Joint Powers Alliance ("NJPA")
- ☐ City/County of _____
- ☐ Other _____

Department:	Click here to enter text.	
Base Contract BID/RFP/RFSQ Number:	Click here to enter text.	
Alternate Source Contract Number: <i>(Used for State Contracts)</i>	Click here to enter text.	
Contractor Name:	Click here to enter text.	
Contractor's Authorized Dealer:	Click here to enter text.	
Delivery/Installation/Product/Service Location:	Click here to enter text.	
Description:	Click here to enter text. Click here to enter text. Click here to enter text.	
Contract Initial Term/Term: <i>(check appropriate term and enter dates)</i>	☐ From: Click here to enter text. To: Click here to enter text. ☐ Effective last date Agreement signed by Parties and shall continue until Click here to enter text.	
Contract Renewal Term: <i>(No. of Renewals and Term for each renewal)</i>	Click here to enter text. Click here to enter text.	
Authorization of Services: <i>(check one)</i>	☐ Written Purchase Order(s) ☐ Notice(s) to Proceed ☐ Task Authorization(s)	
Amount of City Expenditure per Fiscal Year (10/1 to 9/30) or Annually (Contract execution date and term):	☐ Fiscal Year Click here to enter text. ☐ Annually Click here to enter text.	
Payment and Performance Bond <i>(Indicate if required)</i>	☐ Yes ☐ No	
Exhibits Attached to Contract <i>(excluding legal Exhibits, if any)</i>	☐ Exhibit "1" Contract History ☐ Exhibit "2" Insurance ☐ Exhibit "3" Task Authorization Example ☐ Exhibit "4" Cost/Quote ☐ Exhibit "5" Bond ☐ Exhibit "6" Subcontractors ☐ Exhibit "7" Other	
Contract Administrator:	Click here to enter text.	
Contractor's Authorized Agent Name Printed ¹:	Click here to enter text.	
Contractor's Complete Contact Information:	Principal Address:	Telephone: Fax: E-Mail:
Signature: Contractor's Authorized Agent ¹:		Date:
Contractor Notary Acknowledgment Block: <i>Seal/Stamp</i>		
STATE OF _____ COUNTY OF _____		
The foregoing instrument was acknowledged before me this _____ day of _____, 20____,		
by _____, as _____ of _____, a _____ and who:		
<i>[Notary: Please select one]</i>		
☐ is personally known to me; or		
☐ has produced _____ as identification.		
Notary Public, State of _____		
<i>Printed, typed or stamped name, commission and expiration:</i>		
Department Head Signature Acknowledges the following: <i>The base contract referenced above for piggybacking by the City of Port Orange has been verified to be competitively bid with multiple proposals from vendors/contractors within two years from the date of this piggyback agreement, unless waived by the City Manager in writing or at the direction of City Council. The Department Head further acknowledges that the vendor package, all supporting vendor documentation, and the entire base contract, including but not limited to all exhibits, and all terms and conditions is uploaded to the City of Port Orange BoardSync Contract Management for recordation.</i>		
Department Head Name, Title Printed:	Click here to enter text.	
Signature: Department Head		Date:
Signature: M.H. Johansson, City Manager		Date:
Attest: Robin L. Fenwick, CMC, City Clerk		Date:
¹ If this Agreement is signed by an individual not identified as the Chief Executive Officer of the Contractor in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation. <i>[Click or tap here to enter text.]</i>		

This Piggyback Agreement ("Agreement") is entered into on the last date the Agreement is signed by the Parties, by and between the CITY OF PORT ORANGE, a Florida municipal whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and Contractor named on the first page of this Agreement (the "Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

For good and valuable consideration, conditions and promises, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. The terms of the "Base Contract" with the entity as shown on the first page of this Agreement are incorporated herein by reference.
3. Agreement chronology and City insurance requirements are attached hereto as Exhibit "1" and Exhibit "2."

4. Contractor Obligation. Contractor agrees to honor the terms of the Base Contract, and to provide the City the specified goods, work, or services as more specifically described on the first page of this Agreement, and any Exhibits, attached hereto. Contractor agrees that all pricing shall remain valid for the duration of this Agreement. Contractor shall not deliver goods, work, or services without written Purchase Order(s), and/or Notice to Proceed(s), or Task Authorization(s), as indicated on the first page of this Agreement.

5. Authorization for Services.

(a) This Agreement standing alone does not authorize the purchase of any goods, work, or services, or require the City to place any orders for goods, work, or services. Authorization for the purchase of goods, work, or services shall be in the form of written Purchase Order(s) and/or Notice to Proceed(s), or Task Authorization(s), as indicated on the first page of this Agreement, and signed by an authorized agent of the City. If applicable, a sample Task Authorization will be attached hereto as Exhibit "3." The City reserves the right to contract with other parties for the goods, work, or services contemplated by this Agreement, as determined in the City's sole and absolute discretion. Contractor shall provide and maintain a current vendor application as set forth on www.port-orange.org.

(b) 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 the quote shall be of no significance, shall not be binding on the City, and the City's acceptance of the Contractor's goods, work, or services shall not be deemed as acceptance of such terms. The terms and conditions contained in a Supplemental Document, as defined herein after, to this Agreement shall only control if and when a Supplemental Document to this Agreement is signed by the City Manager or Mayor. The terms and conditions contained in a Supplemental Document fully executed by the City Manager or Mayor are incorporated herein by this reference. In the event that a Contractor contracts with the City via a Supplemental Document and there is a conflict between the general terms and conditions set forth herein and the Supplemental Document, the terms and conditions of the Supplemental Document shall control. Supplemental Document shall be defined to include: Invitation to Bid ("ITB"), proposal, quote, and contract. Unless otherwise stated on the face of this Agreement, the terms and conditions as set forth in this Agreement shall apply.

6. Manner and Place: The work or services performed for this Agreement shall be in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way), as applicable, 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.

7. Time and Essence. Contractor acknowledges that time is of the essence for this Agreement.

8. City Obligations. In return for the goods, work, or services identified, the City agrees to compensate the Contractor at an amount subject to a limit up to but not to exceed the unit prices and/or amount, as set forth on the first page of this Agreement, and as may be further specified in Exhibit "4," attached hereto. The term "Fiscal Year" shall be defined as that one (1) year period commencing on October 1 and expiring on the following September 30. The City's obligation to pay Contractor under this Agreement is limited to the budgeted amount for the fiscal year approved by the Port Orange City Council, for the then-current fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

9. Contract Administration. The Department Head requesting service ("Contract Administrator"), shall perform contract administration of this Agreement unless otherwise delegated in writing. For notice provisions, see Paragraph 35 of this Agreement entitled "Notice." The work shall be reviewed by the authorized Contract Administrator, or designee, who shall have final decision authority for pay requests on all approved phases of the work, including general direction, review, and approval of the work. Neither the Contract Administrator's review, approval or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall be and remain liable to the City for all costs of any kind which were incurred by the City as a result of the Contractor's negligent performance of the services furnished under this Agreement.

10. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.

11. Agreement Bond Documents. When applicable, the following bond forms are an integral part of this Agreement and must be attached hereto as Exhibit "5," completed, signed, witnessed and notarized as indicated and returned with the signed Agreement:

- (a) Front Page for Bond (F.S. § 255.05)
- (b) Combination Payment and Performance Bond (F.S. § 255.05)

All construction Agreements shall require one (1) original Bond in the form approved by the City Attorney. Engineer/Architect shall not require duplicate original bond documents in the draft construction documents and Agreement for the City. Contractor expressly acknowledges that if the work to be performed hereunder is a public work, a Payment and Performance Bond, in accordance with Florida Statutes Section 255.05, in a form acceptable to the City, shall be provided and recorded by the City Attorney's office with the Clerk of Volusia County at Contractors expense.

12. Additional Bond Security. If any surety bond furnished in connection with this Agreement becomes unacceptable to the City, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Agreement.

13. Subcontractors and Outside Associates and Consultants. Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the Agreement will be limited to such individuals or firms as are specifically identified in Exhibit "6" to this Agreement and a task authorization amendment. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

14. Termination for Convenience of the City.

(a) The parties agree that the City may terminate this Agreement, 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 Agreement, 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 Agreement not subject to the Notice;
- (iii) terminate all sub-agreements except those made with respect to Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 30 of this Agreement concerning disputes.

15. Termination for Convenience for Subcontractors. In accordance with the termination for the convenience of the City provision of this Agreement, the Contractor shall include similar provisions in any sub-agreement, 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.

16. Termination for Default. Either party may terminate this Agreement, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

17. 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 Agreement.

(b) The Contractor further agrees to include in any sub-agreement for more than \$10,000 entered into as a result of this Agreement, 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 sub-agreement, 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 sub-agreement, or this Agreement. The term sub-agreement 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 Agreement or any sub-agreement shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

18. 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.

(d) Upon completion of the Agreement, 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 Agreement, and the Contractor may be subject to penalties under Section 119.10, 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

19. Termination for Non-Appropriation of Funds.

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this Agreement is entered into, for the purpose of this Agreement, then the City may terminate this Agreement 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 Agreement was entered into. This provision shall survive any termination of the Agreement.

20. An Agreement 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 herein.

21. Assignability of Contract. This Agreement may not be assigned by the Contractor to any other party without the express written approval of the City Council.

22. Modifications or Changes to this Agreement.

(a) Change Orders. The Contract Administrator, upon written approval as required by the City's finance ordinances and policies, shall without notice to any sureties, have the authority to order changes in this Agreement which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in one or more of the following: the services to be performed, the Agreement price or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Agreement.

(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 notify the City requesting an equitable adjustment and the Agreement shall be modified in writing as mutually agreed by the Parties. Any change order shall include all costs and time extensions related to or incidental to such change.

(c) Any claim by the Contractor for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the Agreement. The Contractor shall proceed with the prosecution of the work as changed. Except as provided in this Agreement, the Contractor shall not be entitled to payment for a charge for any extra work or material.

(d) Contractor shall not perform any work described in any change order unless the City has budgeted and appropriated funds sufficient to cover the cost of such changes.

(e) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Agreement.

23. Sovereign Immunity. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

24. Warranties. For the purchase of goods, Contractor warrants that (1) the supplies to be provided to the City pursuant to this Agreement are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Agreement conform to the standards required by this Agreement. Contractor further warrants that Contractor has title to the supplies provided, and that the supplies are free and clear of all liens encumbrances, and security interests. All warranties made in this Agreement, together with service warranties and guarantees, shall run to the City and its successors and assigns.

25. Additional Warranties. For the purchase of goods, Contractor further expressly warrants that materials and workmanship are warranted from defect for a one-year period. This is a minimum acceptable warranty.

26. Inspection. For the purchase of goods/supplies:

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and their products) shall be subject to inspection and test by the City, to the extent practicable at all times and places including the place of manufacturer, and in any event prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Agreement, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contract Administrator, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by agreement or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Agreement for default as provided in the clause of this agreement entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Contract Administrator may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Agreement. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Agreement requirements nor impose liability on the City therefor.

(c) The inspection and test by the City of any supplies or lots thereof does not relieve Contractor from any responsibility regarding defects or other failures to meet the Agreement requirements, which may be discovered prior to acceptance. Except as otherwise provided in this Agreement, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

27. Liability for Loss or Damage. Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Agreement by Contractor, his/its agents, servants and employees. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

28. Non-discrimination. During the performance of this Agreement, 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) Contractor shall be solely responsible for compliance with all federal, state and local laws, rules and regulations prohibiting discrimination of its officers, agents, employees and subcontractors. Contractor shall post notices, advertisements and solicitations in accordance with federal law, rule or regulation. 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.

29. 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 Agreement and shall expressly require any subcontractor performing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

30. 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. 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.

31. Force Majeure. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

32. 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.**

33. Additional Provisions.

(a) This Agreement includes all additional provisions as may have been outlined in the Base Contract and any attachments or exhibits to this Agreement, whether delivered herewith or subsequently

approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work.

(b) In the event of a conflict between the Base Contract, and this Agreement, this Agreement shall control.

34. Integration. This Agreement 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 Agreement shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

35. 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: Contract Administrator, as listed on first page of Agreement
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5500

Contractor: Contractor name and contract information, as listed on first page of this Agreement

Any notice or other communication given under this Agreement will be in writing and delivered by hand, sent by facsimile (provided acknowledgment of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the address 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.

36. Agreement Construction.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered except for the bond. No contract shall be formed between Contractor and the City until the City signs this Agreement.

37. 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]

Contract History

Click here to enter text.

[Remainder of this page intentionally left blank]

EXHIBIT "1"

Insurance

(a) Contractor shall maintain insurance during the life of this Agreement. Contractor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. The Contractor shall furnish policies and certificates of insurance to the City for review and approval on initial contract date and thereafter at least on each anniversary of the Agreement effective date. Failure of the Contractor to maintain a certificate of insurance in compliance or approval by the City of any policy of insurance shall not relieve the Contractor from its responsibilities to provide the insurance coverage required herein. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by these provisions. No work shall be commenced until City has approved the policies. This Agreement may be terminated by the City without penalty or expense, if policies requested hereunder are not provided to and approved by the City within thirty (30) days of the date hereof. The Contractor shall notify the Contract Administrator and the Purchasing Manager of any changes in or cancellations of coverage.

(b) For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Contractor shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Contractor shall be solely responsible to provide the City the written original certificate, notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change. The City reserves the right to increase insurance coverage as determined for higher risk Agreements and shall reimburse the Contractor for the reasonable additional costs of increased coverage. The Contractor shall maintain the following coverages:

Standard Insurance Requirements			
	Insurance	Standards	Additional Requirements
☒	Workers' Compensation <u>Additional Coverage:</u>	<u>Limits:</u> Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	☐ If Agreement 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.
☐	Officer(s) Exemption	<u>Documentation Required for Exemption: (must be attached to Purchase Order)</u> ☐ Florida Department of Financial Services business activities on exemption detail page. ☐ Verification of Workers' Compensation for employee(s) and subcontractor(s). ☐ List of all subcontractor(s) utilized for work provided by this Purchase Order.	
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$500,000 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 Agreement, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	<u>Limits:</u> Auto Liability Bodily Injury: \$200,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage

Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	Limits: Buildings - Completed value of agreement. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000 minimum	
☐	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Errors and Omissions	Limits: Coverage - \$ <u>To be determined.</u>	Agents acting on behalf of the City.
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	Department Head waives Payment and Performance Bond for work under \$25,000.00.		
☐	Department Head waives Insurance for work under \$ _____, unless otherwise required by law.		

[Remainder of this page intentionally left blank]

TASK AUTHORIZATION NO. [Click here to enter text.](#)
Piggyback Agreement for Goods and Services dated [Click here to enter text.](#)
Between the City of Port Orange, Florida and [Click here to enter text.](#)

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and [Click here to enter text.](#), a [Click here to enter text.](#) with its principal place of business at [Click here to enter text.](#) ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Piggyback Agreement for Goods and Services dated as referenced above, and any amendments thereto, hereinafter collectively referred to as the "Agreement." The Parties, in exchange for the mutual covenants contained herein and in the Base Contract, agree as follows:

1. This Task Authorization expressly modifies the Base Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. The [Click here to enter text.](#) Department Head, [Click here to enter text.](#), or their designee, [Click here to enter text.](#), if applicable, shall perform contract administration for this Task Authorization No. [Click here to enter text.](#), and may be reached at [Click here to enter text.](#).
3. In addition to all other terms and conditions contained in the Agreement, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."
4. Contractor shall complete the services to be provided herein within [Click here to enter text.](#) days of the date of written notice by the City to the Contractor.
5. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "A" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed \$ [Click here to enter text.](#). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
6. Contractor shall provide a 100% Combination Payment and Performance Bond in accordance with Florida Statutes Section 255.05, including the Front Page and Certificate for Filing in Public Records, in a form substantially similar to the forms attached hereto as Task Authorization Exhibit "B," and acceptable to the Port Orange City Attorney, and recorded with the Clerk of Volusia County at Contractor's expense. A separate bond shall be provided from the Surety which identifies and covers the scope of work for the project stated in this Task Authorization along with all other provisions of this Task Authorization with the penal sum of such bond being not less than the sum described in this Task Authorization. If any surety bond furnished in connection with this Task Authorization becomes unacceptable to the City, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Task Authorization No. ____.
7. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:



Printed Name: _____

By: _____

Printed Name: _____

Title: _____

If this Contract is signed by an individual not identified as the President of the corporation or other authorized executive in the records of the Florida Department of State, Division of Corporations, or other legally authorized person, then please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Printed Name: _____

Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____

M.H. Johansson, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, CMC, City Clerk

Printed Name: _____

Date: _____

EXHIBIT "3"

<Insert Cost/Quote>

EXHIBIT "4"

RETURN RECORDED DOCUMENT TO:

City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

FRONT PAGE FOR BOND REQUIRED BY SECTION 255.05, F.S.

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. _____

PRINCIPAL:

Developer or Contractor: _____

Principal Business Address: _____

Contact Person: _____

Phone Number: _____

SURETY:

Address: _____

Contact Person: _____

Phone Number: _____

OWNER:

City of Port Orange, Florida, a chartered municipal corporation

1000 City Center Circle

Port Orange, Florida 32129-4144

Contact Person: _____

Phone Number: _____

City Manager

(386) 506-5501

Amount: \$ _____

City Case/Project No. _____

Description of Work: _____

Project Location: _____

Port Orange, Volusia County, Florida

Legal Description: _____

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

Name of Project

City Project No. _____

Bond No. _____

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

per Section 255.05, Florida Statutes

Guaranty for Construction of Public Improvements

BY THIS BOND, We, _____ as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ **DOLLARS (\$_____)**, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain _____ having an effective date of _____, entered into by and between the Principal and the City, for _____, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.02(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.

[MTR/sal 2015-02-10]

EXHIBIT "5"

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this _____, day of _____, 20__.

Attest:

(Name of Principal)

(As to Corporate Principal) Secretary

By: _____

Name/Title: _____

(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.

[MTR/sal 2015-02-10]

EXHIBIT "5"

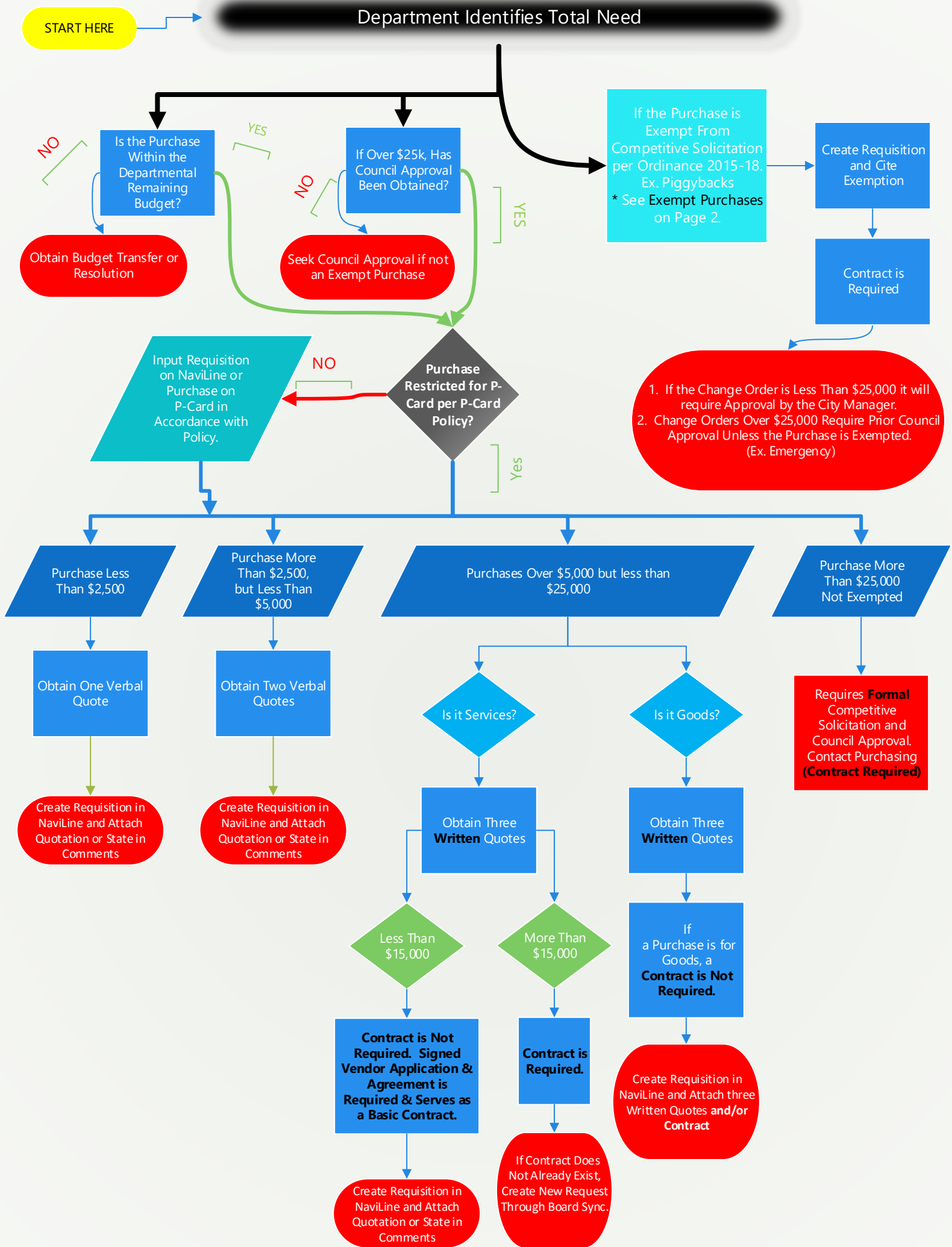
List of Subcontractors

EXHIBIT "6"

Other

EXHIBIT "7"

METHOD OF PROCUREMENT PROCESS MAP



[Exempt purchases.] Purchases exceeding \$25,000.00 require approval by city council except for goods and/or services that do not lend themselves to the normal competitive bidding process and the city manager has approved waiving the formal bidding requirements, as follows:

- (1) Maintenance and/or service contracts, on various types of technical equipment that are offered and/or supplied only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental, lease or lease purchase agreement's terms and conditions.
- (2) Materials purchased directly from a producer or publisher, an owner of a copyright, an exclusive agent with the state, a governmental agency or a recognized educational institution.
- (3) Public or regulated utility services or government franchised services.
- (4) Commodities or contractual services determined to only be available from a single source. The city shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of at least seven business days. The posted description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described.
- (5) Professional services (except as otherwise provided for in Florida law) and contracts for professional services (which include, but are not limited to, services provided by attorneys, accountants, actuaries, lobbyists and financial advisors) may be made or entered into by the city manager without utilizing a sealed competitive method or the written quotations method.
- (6) Admission fees.
- (7) Association fees and professional association dues.
- (8) License fees and agreements.
- (9) Media advertising (i.e., newspaper, radio, television, etc.).
- (10) Permit fees.
- (11) Petty cash replenishment.
- (12) Postage.
- (13) Registration fees.
- (14) State fees (unemployment compensation).
- (15) Travel reimbursement.
- (16) Insurance coverage or claims expenditures as provided in the insurance fund, excepting, however, damage to city-owned property.
- (17) Supplies, equipment and vehicles purchased at a public auction.
- (18) Purchases from other governmental agencies, including school boards, community colleges, federal agencies, and agencies from other states, when the awarded contract by the other entity permits purchases by the city on the same terms, conditions, and prices (or below such prices) and the purchase is considered economically advantageous to the city.
- (19) Purchase, sale, lease or rental of real property.
- (20) Items for resale when purchased in compliance with the restrictions listed below:
 - a. Items purchased shall be exclusively for resale;
 - b. Items shall include brand name specifications significant to their retail sales appeal; and
 - c. Items, after reasonable expected resale, shall result in no cost to the city.

Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

From AMccall@port-orange.org <AMccall@port-orange.org> <AMccall@port-orange.org>

Date Tue 7/28/2026 4:27 PM

To nferraro@gregori-inc.com <nferraro@gregori-inc.com>

Cc LanceS@gregori-inc.com <LanceS@gregori-inc.com>; bcurry@gregori-inc.com <bcurry@gregori-inc.com>; shorwat@gregori-inc.com <shorwat@gregori-inc.com>

Hi Nathan,

The response is in the review stage and is expected to be presented to Masci next week. I have no way of gaging their response. I'll continue to update you as new information becomes available.

I appreciate your patience as the process unfolds.

Sincerely,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Tuesday, July 28, 2026 3:53 PM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good afternoon Anthony,

I hope all is well.

I am reaching out regarding the Cambridge Pump Station Upgrades Project. We want to respect the city through the bid protest and appreciate that the City must follow the established procurement process. We also understand that these matters take time. At the same time, we are heavily invested in this project and do not want to lose this opportunity with the city. If possible, we would appreciate an update on the current status of the project, any anticipated next steps, and the expected timeline for resolution. If there are any additional actions or information needed from our team to help facilitate the process, please let us know.

Thank you for your time and consideration. We appreciate any information you can provide regarding a path forward and look forward to hearing from you.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>
Sent: Tuesday, July 14, 2026 3:21 PM
To: Nathan Ferraro <nferraro@gregori-inc.com>
Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>
Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hi Nathan,

I don't have an update yet regarding any follow-up actions from Masci. I'll keep you updated as new information becomes available.

Thank you,

Anthony McCall, CPP
Purchasing Agent
Finance Department
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Phone: 386-506-5717
Email: amccall@port-orange.org and purchdiv@port-orange.org
Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>
Sent: Monday, July 13, 2026 10:03 AM
To: McCall, Anthony <AMccall@port-orange.org>
Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>
Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good morning, Mr. McCall,
I am just reaching out to see if you have an update from our discussions on Thursday 07/02/26 , or if there is anything you need from us at this time.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>
Sent: Thursday, July 2, 2026 9:00 AM
To: Nathan Ferraro <nferraro@gregori-inc.com>
Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>
Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Yes, that works for me.

Anthony McCall, CPP
Purchasing Agent
Finance Department
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Phone: 386-506-5717
Email: amccall@port-orange.org and purchdiv@port-orange.org
Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Thursday, July 2, 2026 8:53 AM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good morning Mr McCall, can we do a Teams call? I have my owner and 1 other that want the opportunity to be on the call. If not I can merge them into the call.

Thanks,

Nathan Ferraro

Gregori Construction

Cell 321-307-0894

Email NFerraro@gregori-inc.com

On Jul 2, 2026, at 7:53 AM, McCall, Anthony <AMccall@port-orange.org> wrote:

Hi Nathan,

I'm available at 9:00am to review this information with you. My direct line is shown in my signature block.

Thanks,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org

<image.png>

From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Wednesday, July 1, 2026 5:29 PM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>; Nathan Ferraro <nferraro@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good afternoon Mr. McCall,

Thank you for providing these documents. Gregori Construction is currently reviewing them now. We also have reached out to our legal counsel. I would welcome the opportunity to get on a call tomorrow morning and discuss what is needed from Gregori next. Does 9-10 am work for you? Thank you.

Thanks,
<image.png>

From: McCall, Anthony <AMccall@port-orange.org>

Sent: Wednesday, July 1, 2026 12:16 PM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Subject: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hello Mr. Ferraro,

I am providing you with a copy of the Formal Written Protest to ITB 26-06 Cambridge Pump Station Upgrade as submitted by Masci General Contractor, Inc.

This is being provided for your awareness of the protest and the nature of the issues raised by Masci. I have also included the exhibits that were provided with the bid protest.

I'll be back in the office tomorrow morning at 8:00AM, please call me to discuss.

Sincerely,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org

<Outlook-d2qt1uan.png>

Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

From AMccall@port-orange.org <AMccall@port-orange.org> <AMccall@port-orange.org>

Date Tue 8/11/2026 4:44 PM

To nferraro@gregori-inc.com <nferraro@gregori-inc.com>

Cc LanceS@gregori-inc.com <LanceS@gregori-inc.com>; bcurry@gregori-inc.com <bcurry@gregori-inc.com>; shorwat@gregori-inc.com <shorwat@gregori-inc.com>

Hi Nathan,

I just left you a voice message. Masci will be at the **City Council Meeting on Tuesday, September 1, 2026**. The **meeting begins at 6:30pm** and will be in council chambers at City Hall, 1000 City Center Circle, Port Orange, FL 32129.

I invite you to attend and you can bring council if you feel that is in your best interest. You would have the opportunity to make a statement of your own at some point in the proceedings.

Masci's council must submit his information to the City Clerk by 8/26/2026 to be on the agenda for the 9/1/2026 meeting. The final agenda for the meeting will be published on the City website on 8/27/2026.

Sincerely,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Friday, August 7, 2026 8:01 AM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>; Nathan Ferraro <nferraro@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hey Anthony,

Thank you for the update. Once you have the date and time, please let us know, we anticipate attending.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>

Sent: Thursday, August 6, 2026 2:19 PM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hi Nathan,

Masci has decided to continue their protest and go before the City Council. I don't have a date for the meeting that they will present to council. Once I have the specifics, I'll provide you with the details for you to be in attendance.

Thanks,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Tuesday, July 28, 2026 4:55 PM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Anthony,
Thank you for the update.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>

Sent: Tuesday, July 28, 2026 4:27 PM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hi Nathan,

The response is in the review stage and is expected to be presented to Masci next week. I have no way of gaging their response. I'll continue to update you as new information becomes available.

I appreciate your patience as the process unfolds.

Sincerely,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Tuesday, July 28, 2026 3:53 PM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good afternoon Anthony,

I hope all is well.

I am reaching out regarding the Cambridge Pump Station Upgrades Project. We want to respect the city through the bid protest and appreciate that the City must follow the established procurement process. We also understand that these matters take time. At the same time, we are heavily invested in this project and do not want to lose this opportunity with the city. If possible, we would appreciate an update on the current status of the project, any anticipated next steps, and the expected timeline for resolution. If there are any additional actions or information needed from our team to help facilitate the process, please let us know.

Thank you for your time and consideration. We appreciate any information you can provide regarding a path forward and look forward to hearing from you.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>

Sent: Tuesday, July 14, 2026 3:21 PM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hi Nathan,

I don't have an update yet regarding any follow-up actions from Masci. I'll keep you updated as new information becomes available.

Thank you,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Monday, July 13, 2026 10:03 AM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good morning, Mr. McCall,

I am just reaching out to see if you have an update from our discussions on Thursday 07/02/26 , or if there is anything you need from us at this time.

Thanks,



From: McCall, Anthony <AMccall@port-orange.org>

Sent: Thursday, July 2, 2026 9:00 AM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Yes, that works for me.

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org



From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Thursday, July 2, 2026 8:53 AM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good morning Mr McCall, can we do a Teams call? I have my owner and 1 other that want the opportunity to be on the call. If not I can merge them into the call.

Thanks,

Nathan Ferraro

Gregori Construction

Cell 321-307-0894

Email NFerraro@gregori-inc.com

On Jul 2, 2026, at 7:53 AM, McCall, Anthony <AMccall@port-orange.org> wrote:

Hi Nathan,

I'm available at 9:00am to review this information with you. My direct line is shown in my signature block.

Thanks,

Anthony McCall, CPP

Purchasing Agent

Finance Department

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5717

Email: amccall@port-orange.org and purchdiv@port-orange.org

Website: www.port-orange.org

<image.png>

From: Nathan Ferraro <nferraro@gregori-inc.com>

Sent: Wednesday, July 1, 2026 5:29 PM

To: McCall, Anthony <AMccall@port-orange.org>

Cc: Lance Shreffler <LanceS@gregori-inc.com>; Brian Curry <bcurry@gregori-inc.com>; Seth Horwat <shorwat@gregori-inc.com>; Nathan Ferraro <nferraro@gregori-inc.com>

Subject: [EXT] Re: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Good afternoon Mr. McCall,

Thank you for providing these documents. Gregori Construction is currently reviewing them now. We also have reached out to our legal counsel. I would welcome the opportunity to get on a call tomorrow morning and discuss what is needed from Gregori next. Does 9-10 am work for you? Thank you.

Thanks,

<image.png>

From: McCall, Anthony <AMccall@port-orange.org>

Sent: Wednesday, July 1, 2026 12:16 PM

To: Nathan Ferraro <nferraro@gregori-inc.com>

Subject: ITB 26-06 Cambridge Pump Station Upgrade - Written Formal Protest

Hello Mr. Ferraro,

I am providing you with a copy of the Formal Written Protest to ITB 26-06 Cambridge Pump Station Upgrade as submitted by Masci General Contractor, Inc.

This is being provided for your awareness of the protest and the nature of the issues raised by Masci. I have also included the exhibits that were provided with the bid protest.

I'll be back in the office tomorrow morning at 8:00AM, please call me to discuss.

Sincerely,

Anthony McCall, CPP

Purchasing Agent
Finance Department
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Phone: 386-506-5717
Email: amccall@port-orange.org and purchdiv@port-orange.org
Website: www.port-orange.org
<Outlook-d2qt1uan.png>

STATE OF FLORIDA
CITY OF PORT ORANGE

MASCI GENERAL CONTRACTOR, INC.,
Petitioner,

v.

CASE NO.: ITB #26-06

CITY OF PORT ORANGE, FLORIDA,
Respondent.

_____ /

MASCI'S REPLY TO GREGORI CONSTRUCTION, INC.'S OPPOSITION

Masci General Contractor, Inc. ("MASCI") replies to the Opposition filed by Gregori Construction, Inc. ("Gregori") on August 26, 2026.

MASCI received Gregori's Opposition on August 31, 2026, the day before the originally scheduled September 1, 2026 Council hearing. MASCI was not served by Gregori, received no notice that Gregori would be permitted to file, was given no briefing schedule, and has been afforded no right of reply. MASCI files this Reply under protest and without waiver, and reserves all rights preserved in its Appeal.

MASCI also submits, with this Reply, City email records produced after its Appeal was filed. Those records are the most important documents in this proceeding. They show that from July 1, 2026 forward the City conducted this protest *with the awardee* by supplying Gregori with MASCI's protest and exhibits, meeting with Gregori's principals, briefing Gregori on the status and imminence of the City's decision before that decision issued to MASCI, and inviting Gregori to the Council hearing, while affording MASCI none of it.

I. THE CITY CONDUCTED THIS PROTEST WITH THE AWARDEE

The City's own emails establish the following, none of which appears in the City Manager's July 29, 2026 denial or in Gregori's Opposition.

A. July 1–2, 2026: the City delivered MASCI's protest to Gregori and met with Gregori's principals. The first "new" reference letter is dated the day of that meeting.

On July 1, 2026 at 12:16 p.m, three days after MASCI filed its Formal Written Protest, the City's Purchasing Agent transmitted to Gregori a complete copy of MASCI's protest together with all of its exhibits, stating that he was providing it "for your awareness of the protest and the nature of the issues raised by Masci," and asking Gregori to call him.

Gregori replied the same afternoon that it was reviewing the materials, had "reached out to our legal counsel," and wished to "discuss what is needed from Gregori next." A call was set for the following morning. Gregori asked that its owner and one other participant be included. The City agreed. The call was held on the morning of July 2, 2026.

The Norfolk Southern letter that Gregori now offers as proof of its qualifications is dated the same day - July 2, 2026. The Melbourne letter followed on July 21, 2026, and the DRMP letter, addressed directly to the City's Purchasing Agent, on August 10, 2026.

MASCI does not ask the Council to find that anyone acted in bad faith. It asks the Council to look at the sequence. The awardee was handed the protest, asked the City what was "needed from Gregori next," met with the City the next morning, and began generating the precise category of documentation the protest had identified as missing from its bid. Whatever the intent, that is the appearance the record creates.

B. July 28, 2026: the City told the awardee the denial was coming, before MASCI was told anything.

On July 28, 2026, Gregori asked the City for a status update, explaining that it was "heavily invested in this project and do[es] not want to lose this opportunity with the city." The Purchasing Agent answered the same afternoon: "The response is in the review stage and is expected to be presented to Masci next week. **I have no way of gaging their response.**"

The City Manager's decision denying the protest issued the next day, July 29, 2026.

Two things follow. First, the awardee was told the existence, status, and expected delivery date of the City's decision before the protestor received the decision itself. Second, the only uncertainty the City identified was how MASCI would react and not what the City would decide. On this record, the outcome was settled and the awardee knew it while MASCI did not.

MASCI received no status updates during this period. MASCI received no email advising it that a decision was drafted, in review, or imminent. MASCI only received the decision.

C. August 2026: the City told the awardee about the appeal, invited it to the hearing, and gave it the filing deadline. MASCI was given none of that.

On August 6, 2026, the City informed Gregori that "Maschi has decided to continue their protest and go before the City Council," and promised to provide the details "for you to be in attendance." On August 7, Gregori confirmed it anticipated attending. On August 11, 2026, the City wrote again: it identified the September 1, 2026 Council meeting, the time and place, invited Gregori to attend and to "bring council if you feel that is in your best interest," advised that Gregori "would have the opportunity to make a statement of your own," and told Gregori that MASCI's counsel had to submit materials to the City Clerk by August 26, 2026, with the agenda published August 27, 2026.

MASCI received no equivalent communication. MASCI was not told that Gregori had been invited to participate, was not told that Gregori would be permitted to file, and was not given the procedure the City had already described to the awardee. Gregori's Opposition, filed on the City's disclosed deadline of August 26, reached MASCI on August 31.

D. Why this matters.

The City's Purchasing Manual establishes a protest procedure with one prescribed pre-decision meeting: the Purchasing Manager "shall schedule within 7 business days ... a meeting"

among the City Manager, City Attorney, Department Director and Supervisor, "and protestor," the intent being "to provide a review and/or solution prior to presenting the matter to Council." The meeting the City convened inside that window was with the awardee.

Competitive bidding exists "to protect the public against collusive contracts and to secure fair competition upon equal terms to all bidders." *Wester v. Belote*, 138 So. 721, 723–24 (Fla. 1931). A public body must conduct itself so as to "inspire public confidence in the fairness of the ... process." *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 652 (Fla. 1st DCA 2007) (quoting *State, Dep't of Lottery v. Gtech Corp.*, 816 So. 2d 648, 651 (Fla. 1st DCA 2001)). A protest in which the challenged party is briefed continuously by the deciding official and the challenging party is briefed not at all does not meet that standard, and no finding of intent is required to say so.

MASCI asks the Council to weigh these communications for what they show about the reliability of the recommendation now before it. A recommendation that rests on no written evaluation, that is defended with documents generated after the awardee was given the protest, and that was disclosed to the awardee before it was disclosed to the protestor, is not a record on which the Council should approve a \$14,396,600 federally funded award.

II. EVERY DOCUMENT GREGORI OFFERS POST-DATES THE AWARD

MASCI's central contention is that the City never performed the evaluation its own specifications required. Gregori's answer is three reference letters, none of which existed on June 16, 2026, when the City issued its Notice of Intent to Award.

Document Offered by Gregori	Date Created	Award Recommendation
Norfolk Southern / Cawley letter	July 2, 2026	June 16, 2026
City of Melbourne / Baker letter	July 21, 2026	June 16, 2026

DRMP / Nickle letter	August 10, 2026	June 16, 2026
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The City could not have considered a document that did not exist. Gregori's Opposition is therefore not a defense of the City's evaluation; it is an attempt to construct one, after the award, after the protest, and after the City handed the protest to the awardee.

Gregori characterizes the letters as merely "rebut[ting] Masci's mischaracterization" of its reference projects and insists they "do[] not amend Gregori's bid." That framing concedes the point. If the City had performed the evaluation ¶ 31 requires, in June, on the bid as submitted, there would be nothing to supplement. Gregori would simply point to the City's written findings. It cannot, because there are none.

III. GREGORI'S OWN FILING CONFIRMS THAT NO EVALUATION DOCUMENT EXISTS

Gregori identifies no contemporaneous document reflecting a responsiveness or responsibility analysis, because none exists.

Gregori argues that "a tabulation sheet is not intended to contain the entirety of the City's technical and responsibility analysis." MASCI agrees. That is precisely the point: the tabulation sheet is not the analysis, and the City has confirmed there is no other analysis. On August 25, 2026, the Assistant City Manager confirmed that the Department Justification Memo produced to MASCI pertained to a different procurement (ITB 20-16), that MASCI "can ignore it," and identified the one-page Notice of Intent to Award as the responsive award record. (App. Ex. A-4, A-5.)

Gregori invites the Council to "inquire of its staff all steps undertaken to evaluate responsiveness and responsibility." MASCI joins that invitation without reservation. The Council should ask. The answer will be that nothing was written down — that ITB 20-16, a \$543,228

watermain project, received a multi-page justification memorandum and an engineer's letter of recommendation, and this \$14,396,600 federally funded flood-control project received one page and a checklist.

Most tellingly, Gregori's own prayer for relief asks this Council to "[i]dentify the evidence considered" and to "[i]ssue written findings and a written final decision." The awardee is asking the Council to create findings that do not presently exist. That is MASCI's appeal, stated by the opposing party.

IV. CONSIDERING GREGORI'S POST-BID SUBMISSION WOULD TAINT ANY AWARD

If the Council accepts Gregori's July and August letters as support for a responsibility determination, it will have permitted the awardee to supplement its qualifications after bid opening, after award, and after protest — an opportunity extended to no other bidder, and extended here only after the City gave the awardee the protest that identified the deficiency.

In *Gtech*, the First District held that where a response did not conform, the agency "should have rejected [it] ... and started anew," rather than accept a materially different arrangement, because doing otherwise "would encourage responders ... to submit non-competitive, unrealistic proposals solely for the purpose of receiving the highest ranking for subsequent negotiations." 816 So. 2d at 651. The rule exists for exactly this situation.

Form 7.8 required each bidder to demonstrate, in its bid, that it had performed projects "similar in nature and size." A bidder that fails to do so cannot cure the deficiency by obtaining letters afterward describing work it never listed. If it could, the requirement would impose no discipline at all.

Nor is this a "minor irregularity" the City may waive. An irregularity may be waived only where no competitive advantage accrues. Permitting one bidder, the intended awardee, to supplement its qualifications after award and after being furnished the protest, while every other bidder remained bound to the four corners of its June 5 submission, is the definition of competitive advantage. The City's Purchasing Manual separately requires that any waiver be documented and clearly noted in award recommendations submitted to Council. None was documented. None was noted.

MASCI respectfully submits that if the Council relies on Gregori's post-bid submission, any resulting award is subject to being set aside on judicial review, and MASCI expressly preserves that issue.

V. RESPONSE TO GREGORI'S SPECIFIC ARGUMENTS

A. MASCI does not argue it is "more qualified." It argues Gregori's bid does not satisfy the City's own form.

Gregori argues at length that this is a sealed-bid procurement, not a comparative selection, and that the Council may not simply award to the contractor it considers "best." MASCI agrees with every word of that. It has never been MASCI's argument.

MASCI's argument is that Form 7.8 established a threshold, not a ranking: three references for projects "similar in nature and size." Gregori's references do not meet it. Two of the three are lift station replacements, at \$2,795,000 and \$1,285,000 equating to 19% and 9% of this contract. The third is a linear drainage installation at \$2,061,225, or 14%. Gregori's largest project of any kind, per its own Attachment F, is \$3,797,797, approximately one quarter of this contract.

City of Sweetwater, on which Gregori relies, is inapposite for the reason identified in *American Engineering & Development Corp. v. Town of Highland Beach*, 20 So. 3d 1000, 1001

(Fla. 4th DCA 2009): in *Sweetwater* all of the bidders met the bid specifications, and the city then ranked them on unpublished criteria. Here, the low bidder did not meet the specification. *Highland Beach* affirmed rejection of a low bidder that did not list the projects "the bidding specifications required." That is this case. Section 255.20(1)(d)1., Florida Statutes, confirms that competitive bidding law is "not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder."

B. Resumes are not project references, and ¶ 31 is not satisfied by information sitting in a file.

Gregori argues that its personnel resumes demonstrate large-diameter drainage, railway, and shoring experience. Two answers.

First, Form 7.8 required three references for projects similar in nature and size, and required them so the City could verify them. The form reserves to the City "the right to check references and confirm information provided herein." Individual resumes describing personal work history at other firms are not project references and do not satisfy the form.

Second, and dispositively: Gregori's position is that the information "was in the bid, and staff had it." Having information in a file is not evaluating it. Paragraph 31 does not say the City will *receive* information about ten factors. It says "there will be considered" ten factors. The record contains no consideration, no findings, no memorandum, no reference verification, no analysis of any kind.

C. Prior teaming with the trenchless subcontractor.

MASCI does not contend the ITB required prior teaming. MASCI's point is narrower and remains unrebutted: Form 7.9 asked whether prior experience existed, Gregori answered "No" as to Huxted Trenchless for the 72-inch casing installation representing 13.2% of contract value, and

that disclosure — which the form exists to elicit — appears nowhere in any City evaluation, because no evaluation was written.

D. The Norfolk Southern letter.

MASCI acknowledges the July 2, 2026 letter from Norfolk Southern Railway describing jack-and-bore culvert replacements and other work performed for that railroad. MASCI does not dispute its contents and withdraws any suggestion that Gregori has performed no railroad-adjacent work.

MASCI's point is different, and the letter now reinforces it in two ways. **None of that work appears anywhere in Gregori's bid**, on Form 7.8 or elsewhere. And the letter is dated the day of the City's meeting with Gregori's principals, one day after the City furnished Gregori with the protest. It did not exist on June 16, 2026; the City did not and could not consider it in recommending award. If Gregori possessed directly relevant railroad experience, the time to present it was in its bid, on the form the City provided for that purpose.

E. Points MASCI does not press.

To narrow the issues for the Council, MASCI does not press the following, none of which is necessary to its position: (i) the contention that Gregori bid without answers to its May 15 pre-bid questions, to the extent Addendum No. 5 addressed them; (ii) any comparison of FDOT prequalification capacity, which is not a requirement of this ITB; and (iii) any characterization of the driving distance between Gregori's Mims office and the project site.

MASCI's remaining point as to the pre-bid questions stands: they are in the City's procurement file, they bear directly on ¶ 31 factors (a), (b), (c), and (j), and no document reflects that anyone at the City considered them in connection with the award recommendation. MASCI has never contended that local presence is a minimum qualification, and agrees it is not; MASCI

raised its Port Orange headquarters and its construction of the existing Cambridge facility as matters pertinent under ¶ 31(j), a factor the solicitation commits to this Council.

F. Public records.

Gregori takes no position on MASCI's Chapter 119 claims and states that it "supports a complete Council record and written findings." MASCI accepts that statement. Those claims are preserved for circuit court and are not asserted as a defect in Gregori's bid. They are relevant here for one reason: they explain why the City's failure to create an evaluation record, and the City's parallel course of dealing with the awardee, were not discovered until after the protest deadline had run.

VI. WHAT THE PARTIES AGREE ON

Stripped of advocacy, MASCI and Gregori agree on three propositions, each of which supports the relief MASCI seeks:

- The tabulation sheet is not the City's evaluation. (Gregori: a tabulation sheet "is not intended to contain the entirety of the City's technical and responsibility analysis.")
- Written findings identifying the evidence considered do not presently exist and should be created. (Gregori's requested relief ¶¶ 5–6.)
- The City failed to provide the parties with notice, materials, and a governing procedure for this appeal. (Gregori's opening reservation; MASCI's Preliminary Statement and Section I above. Gregori states it received neither MASCI's appeal and exhibits, the City Manager's decision, the agenda item, nor "written instructions governing the Council proceeding." MASCI's position is the mirror image.)

A Council presented with an award recommendation that (i) rests on no written evaluation, (ii) is defended with evidence created after the award and after the awardee was given the protest, and (iii) arises from a proceeding both parties describe as procedurally irregular, should not approve that award on this record.

VII. RELIEF REQUESTED

MASCI respectfully requests that the City Council:

- i. Decline to consider the reference letters attached to Gregori's Opposition, each of which post-dates the June 16, 2026 award recommendation and none of which was before the City when the recommendation issued;
- ii. Sustain MASCI's appeal and reject Gregori's bid as non-responsive under Section 5, ¶ 86 and as not the "lowest and best responsible Bidder" under Section 5, ¶ 31;
- iii. Award ITB #26-06 to MASCI as the lowest responsive and responsible bidder;
- iv. In the alternative, decline to approve the award and remand to staff with direction to conduct and document the evaluation required by ¶¶ 31 and 86, with written findings on each of the ten factors, based on the bids as submitted on June 5, 2026, before any recommendation returns to Council; or reject all bids and rebid, *see Gtech*, 816 So. 2d at 651;
- v. In the further alternative, continue this matter and establish a written procedure affording both bidders notice, an opportunity to file, and an opportunity to respond; and
- vi. Grant such further relief as is just.

RESERVATION OF RIGHTS

MASCI files this Reply under protest and without waiver. MASCI objects to the City's failure to provide notice of Gregori's participation, to serve Gregori's Opposition, to establish a briefing schedule, or to afford MASCI a right of reply, and preserves that objection. MASCI further objects to the City's ex parte course of communication with the awardee described in Section I, and preserves all challenges arising from it. MASCI reserves all rights, remedies, objections, and defenses, including the right to appeal to the Circuit Court in and for Volusia County within thirty days of this Council's decision; to seek certiorari, declaratory, injunctive, and mandamus relief; to pursue all claims under Chapter 119 and Article I, Sections 9, 21, and 24 of the Florida Constitution; and to seek fees under § 119.12, Florida Statutes.

Respectfully submitted this 10th day of September, 2026,

GELLIS LAW, PLLC

/s/ Sean W. Gellis
SEAN W. GELLIS
Florida Bar No. 105924
2931 Crawfordville Hwy
Crawfordville, FL 32327
(561) 371-2848
sean@gellislaw.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by electronic mail this 10th day of September, 2026 to: Wayne Clark, City Manager; Matthew Jones, City Attorney; Robin Fenwick, Assistant City Manager; Anthony McCall, Purchasing Agent; the Office of the City Clerk; and D. Frank Wright, Esq., Wright, Fulford, Moorhead & Brown, P.A., counsel for Gregori Construction, Inc. (fwright@wfmblaw.com; trapisarda@wfmblaw.com).

/s/ Sean W. Gellis
SEAN W. GELLIS