



City of Palm Coast

Agenda

COUNCIL WORKSHOP

City Hall
160 Lake Avenue
Palm Coast, FL 32164
www.palmcoastgov.com

Mayor Milissa Holland
Vice Mayor Nick Klufas
Council Member Eddie Branquinho
Council Member Robert G. Cuff
Council Member Jack D. Howell, II

Tuesday, October 29, 2019

9:00 AM

CITY HALL

City Staff

Matthew Morton, City Manager

William Reischmann, City Attorney

Virginia A. Smith, City Clerk

- > Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- > Other matters of concern may be discussed as determined by City Council.
- > If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- > In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- > City Council Meetings are streamed live on YouTube at <https://www.youtube.com/user/PalmCoastGovTV/live>.
- > All pagers and cell phones are to remain OFF while City Council is in session.

A CALL TO ORDER

B PLEDGE OF ALLEGIANCE TO THE FLAG

C ROLL CALL

D PUBLIC PARTICIPATION

E PRESENTATIONS

1 PRESENTATION FLORIDA PARK DRIVE IMPROVEMENTS

2 PRESENTATION - PUBLIC PRIVATE PARTNERSHIP REQUEST FOR SOLUTIONS

F WRITTEN ITEMS

3 RESOLUTION 2019-XX APPROVING A REQUEST TO THE STATE OF FLORIDA FOR AN EASEMENT TO CONSTRUCT PART OF THE LEHIGH TRAIL TRAILHEAD

- 4 RESOLUTION 2019-XX APPROVING A GRANT AGREEMENT FOR THE PURCHASE AND INSTALLATION OF GENERATORS AT 5 PUMP STATIONS
- 5 RESOLUTION 2019-XX APPROVING A WORK ORDER WITH MCKIM & CREED, INC. FOR ENGINEERING DESIGN AND CONSTRUCTION SERVICES FOR THE HAZARD MITIGATION GRANT FOR THE INSTALLATION OF GENERATORS FOR 5 PUMPS STATIONS
- 6 RESOLUTION 2019-XX APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF PALM COAST AND FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF 526 MANHOLE DISHS FOR THE WASTEWATER COLLECTION SYSTEM
- 7 RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH G.E.M. STONE CONTRACTORS INC. AND S.E. CLINE CONSTRUCTION, INC. FOR EMERGENCY INSTALLATION OF REPLACEMENT PEP TANKS
- 8 RESOLUTION 2019-XX APPROVING A MASTER PRICE AGREEMENT WITH ALPHA GENERAL SERVICES, INC. FOR EMERGENCY REPLACEMENT PEP TANKS
- 9 RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH MULTIPLE FIRMS FOR DISASTER FINANCIAL RECOVERY CONSULTANT SERVICES
- 10 RESOLUTION 2019-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111
- 11 RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH TETRA TECH, INC., AND DEBRISTECH, INC., FOR DISASTER MONITORING SERVICES
- 12 RESOLUTION 2019-XX APPROVING A MASTER SERVICES AGREEMENT WITH STRICKLAND SOD FOR SOD MATERIALS AND SOD INSTALLATION
- 13 RESOLUTION 2019-XX APPROVING MASTER SERVICES AGREEMENT WITH MULTIPLE FIRMS FOR DIRECTIONAL BORING SERVICES
- 14 RESOLUTION 2019-XX APPROVING PIGGYBACKING THE STATE OF FLORIDA CONTRACT WITH PETROLEUM TRADERS CORPORATION TO PURCHASE BULK FUEL, GASOLINE AND DIESEL PRODUCTS

G PUBLIC PARTICIPATION

H DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA

I DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA

J DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA

K ADJOURNMENT

15 CALENDAR/WORKSHEET

City of Palm Coast, Florida Agenda Item

Agenda Date : 10/29/2019

Department	Stromwater & Engineering	Amount
Item Key		Account
Subject	Presentation Florida Park Drive Improvements	
Background : Presentation on Florida Park Drive Improvements.		
Recommended Action : For presentation only.		

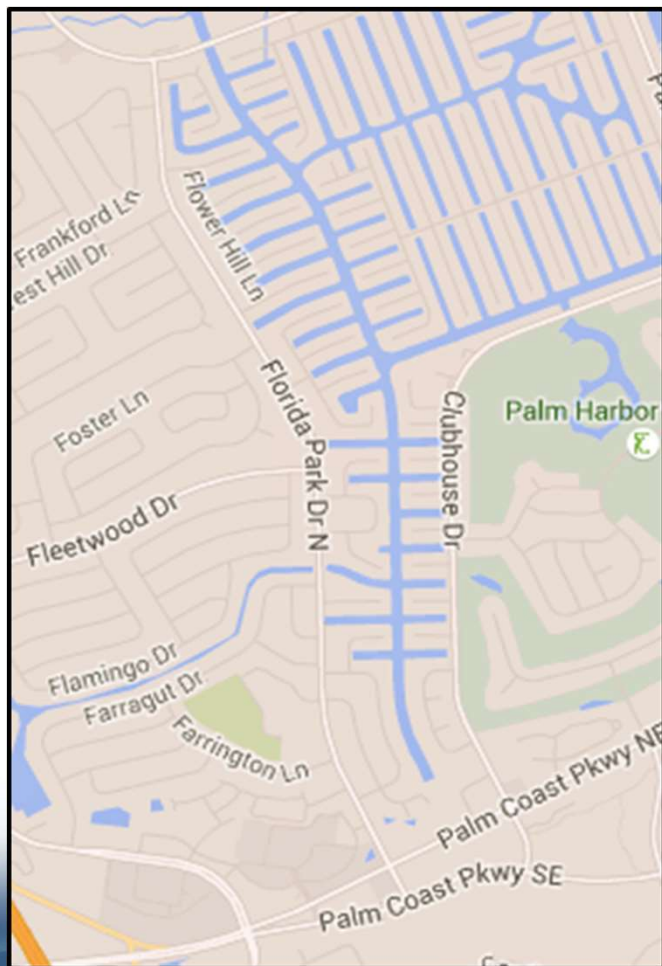


Florida Park Drive

City Council Workshop
October 29, 2019

Find Your Florida

Florida Park Drive – Unique Roadway



- A collector roadway that connects to arterials at each end and that contains driveways to homes & businesses
- High Intensity Commercial Land Use
- Single Family Residential direct driveway access

Items Requested to Analyze & Implement

- **Speed Limit & Radar Enforced Signage**
- **Truck Restriction**
- **Noise Study**
- **Air Quality Study**
- **Landscape Options**

Signage

Speed Limit & Radar Enforced Signage



- ☑ Verified consistency – At least 4 speed limit signs in each direction
- ☑ Add radar enforced plaque at entry speed limit signage

Completed: Week of July 1st

Speed Limit & Radar Enforced Signage



Southern Entry



Northern Entry

Truck Restriction

Truck Restriction



Action Steps

- ☒ Install No Truck Signs – Palm Coast Parkway WB & Palm Harbor Parkway
- ☒ Validate Truck Count Data
- ☒ Determine Truck Restriction - GVW Weight Limitation
- ☒ Determine Alternate Truck Routes
- ☒ Lead by Example - City truck restriction; GPS GeoFence
- ☐ Proposed Truck Restriction Ordinance (Coordinate with Sheriff's Office)
- ☐ Install Truck Restriction & Alternate Truck Route Signs
- ☐ Notify Haulers & Local Business Owners
- ☐ Identify & Communicate with Mapping Apps (Mapquest, Google Maps, etc.)

No Trucks - Signage



No Truck - Signage



Truck Validation

- Resident Video Observation May 24, 2019
- City Traffic Count May 23, 2019



Truck Validation – Truck Designations

Light Trucks



Light Trucks



Truck Validation – Truck Designations

Heavy Trucks



Heavy Trucks



Truck Validation – Truck Counts

Time	6:00 am	7:00	8:00	9:00	10:00	11:00 am
Total Traffic 05/23/19	172	419	567	522	586	562
Light Trucks 05/24/19	2	10	14	15	14	11
Heavy Trucks 05/24/19	5	8	8	7	10	6
Total Light plus Heavy	7	18	22	22	24	17
Percentage Light Trucks	1.2%	2.4%	2.5%	2.9%	2.4%	2.0%
Percentage Heavy Trucks	2.9%	1.9%	1.4%	1.3%	1.7%	1.1%

City Traffic (Tube) Count Fleetwood to Farragut - Thurs 05/23/19
 Resident Video Manual Truck Count - Friday 05/24/19



Truck Restriction - Ordinance

- Truck Restriction – ‘Heavy Trucks’
 - Any truck with 4 or more axles, including any attached trailer; or
 - Any truck with a gross weight in excess of 8,000 lbs
- Establish Truck Routes for Heavy Trucks within the City of Palm Coast
- Restrict Heavy Trucks from any residential road, with exceptions:
 - Any Heavy Truck making a delivery or providing services to or from a location in or abutting the No Truck Zone, which location would otherwise be inaccessible by such vehicle.
 - The operation of a Heavy Truck where necessary to reach the Heavy Truck driver’s personal residence. This exception shall not authorize the parking of a Heavy Truck in front of a personal residence or at any location otherwise prohibited under this Code.
 - Public service or other government-owned vehicles.
 - Emergency vehicles.



Truck Restriction – Signage & Outreach

- Communication to Business Owners
 - Letter to be sent to Business Owners along Florida Park Drive and adjacent to Florida Park on Palm Coast Parkway & Florida Park Drive. (November)
 - Electronic Notification to All Contractors that Obtain Permits from the City. (November)
 - Communication with Island Walk Property Management Group. (November)
- Identify & Notify Mapping Apps (MapQuest, Google Maps, etc.)
- Add Signage to Identify Alternate Truck Routes
 - To be installed after final adoption of ordinance.
- Coordination with Sheriff's Office For Enforcement (Ongoing)



Noise

Noise Impact Analysis

- ☑ Roadway Sampling Utilizing Type 2 Integrating Sound Level Meters during peak hour periods at 4 locations
 - Sampling occurred on July 30, 2019
- ☑ Perform a Federal Highway Administration (FHWA) Traffic Noise Model Utilizing Actual Roadway Geometry and Residential Homes
- ☑ Final Report of Findings
 - Study Delivered August 29, 2019

Noise Impact Analysis - Conclusion

- Traffic Noise Model Evaluation, Performed for Two Methodologies
 - 2019 24 hour count
 - 2017 Average Annual Daily Traffic Count
- Study Conclusion:
 - FDOT Noise Level Standard – 66 dB
 - Human Speech at 3 feet – 65 dB
 - Maximum Recorded Sound Level – 64.3 dB

Air Quality

Air Quality Study

☑ Base Line Monitoring for 2 Roadway Sampling Points

July 30, 2019 to August 30, 2019

- (CO)
- P10 (fungus, mold, pollen)
- P2.5 (non-combusted or partially combusted gas)

☑ Final Report

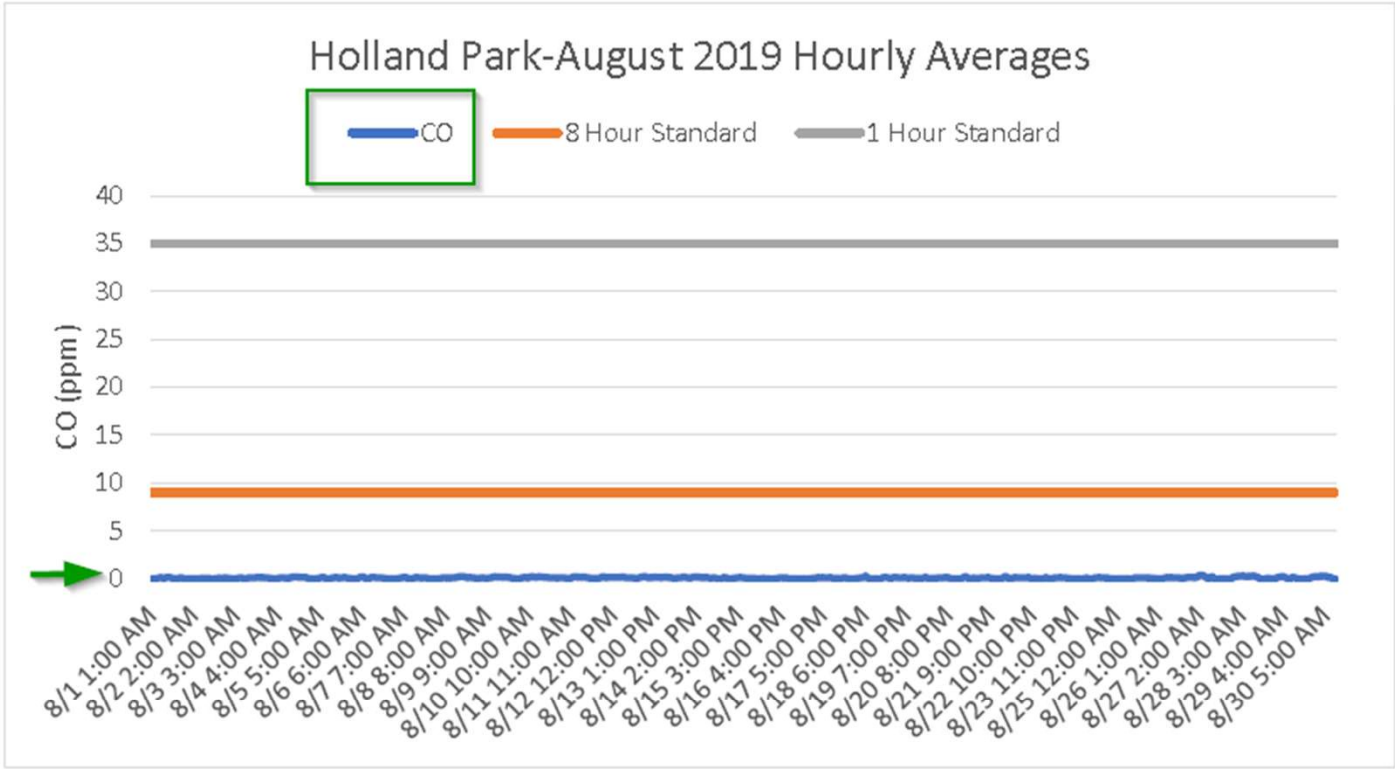
Received September 20, 2019

Air Quality Study - CO

Maximum Acceptable 1-hour standard

Maximum Acceptable 8-hour standard

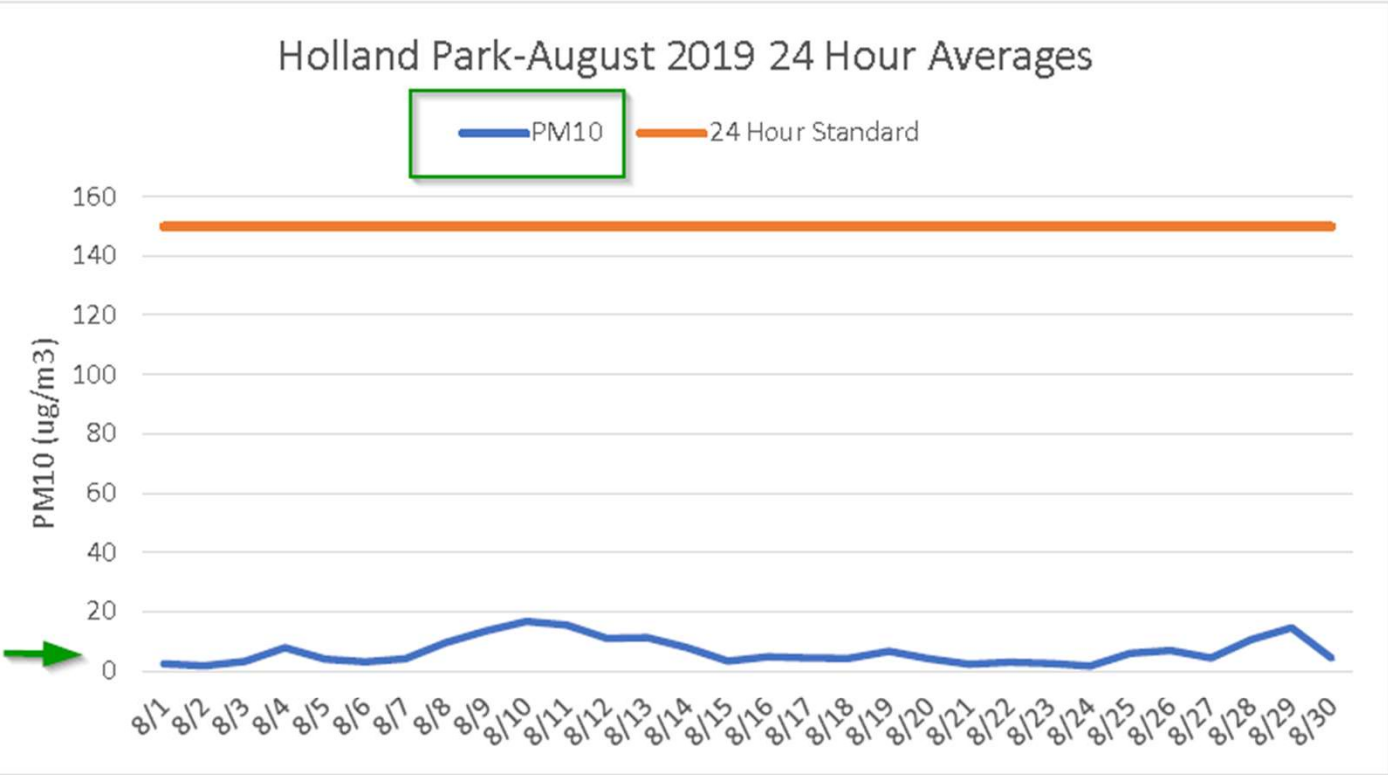
Measured Values



Air Quality Study – PM10

Maximum Acceptable 24-hour standard

Measured Values



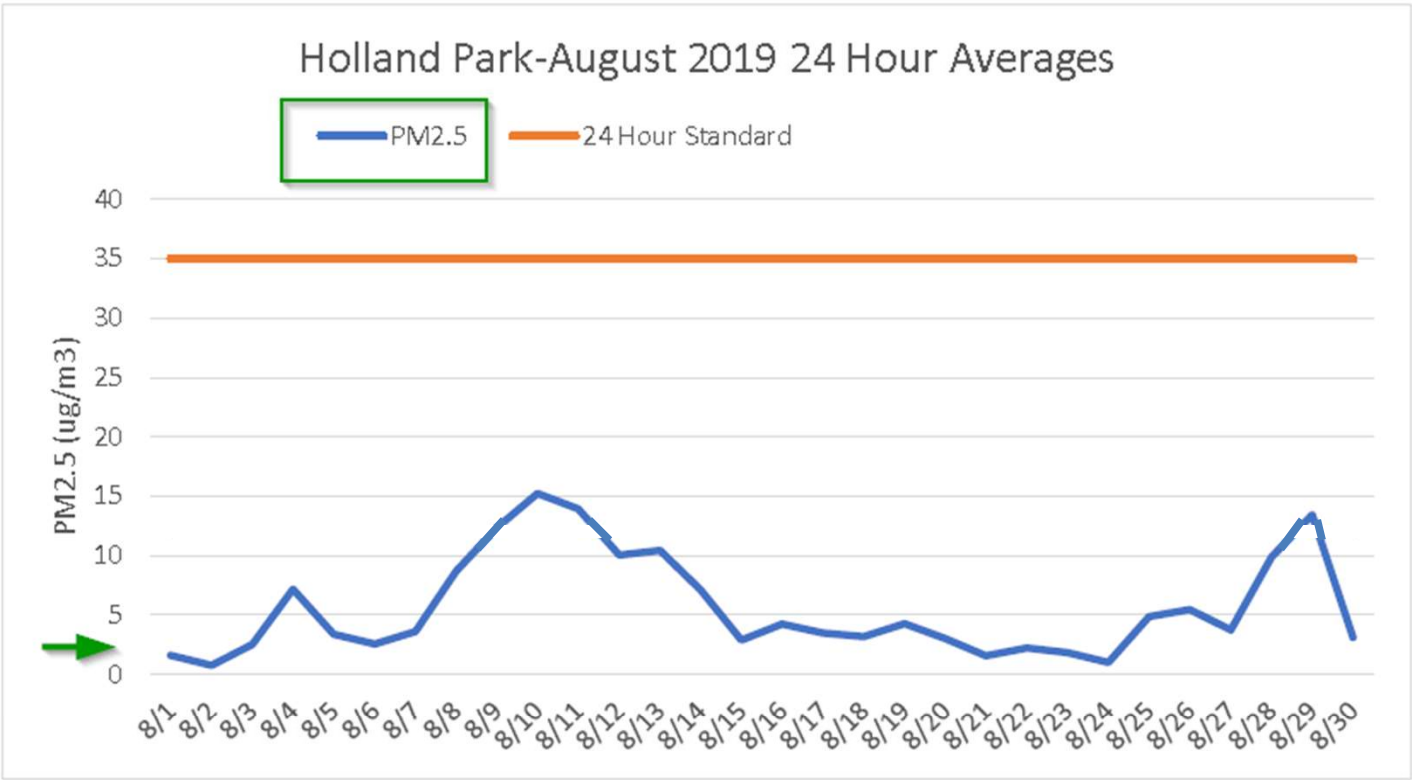
Fungus, Mold, Pollen



Air Quality Study – PM2.5

Maximum Acceptable 24-hour standard

Measured Values



Partially Combusted Gases



Air Study - Conclusion

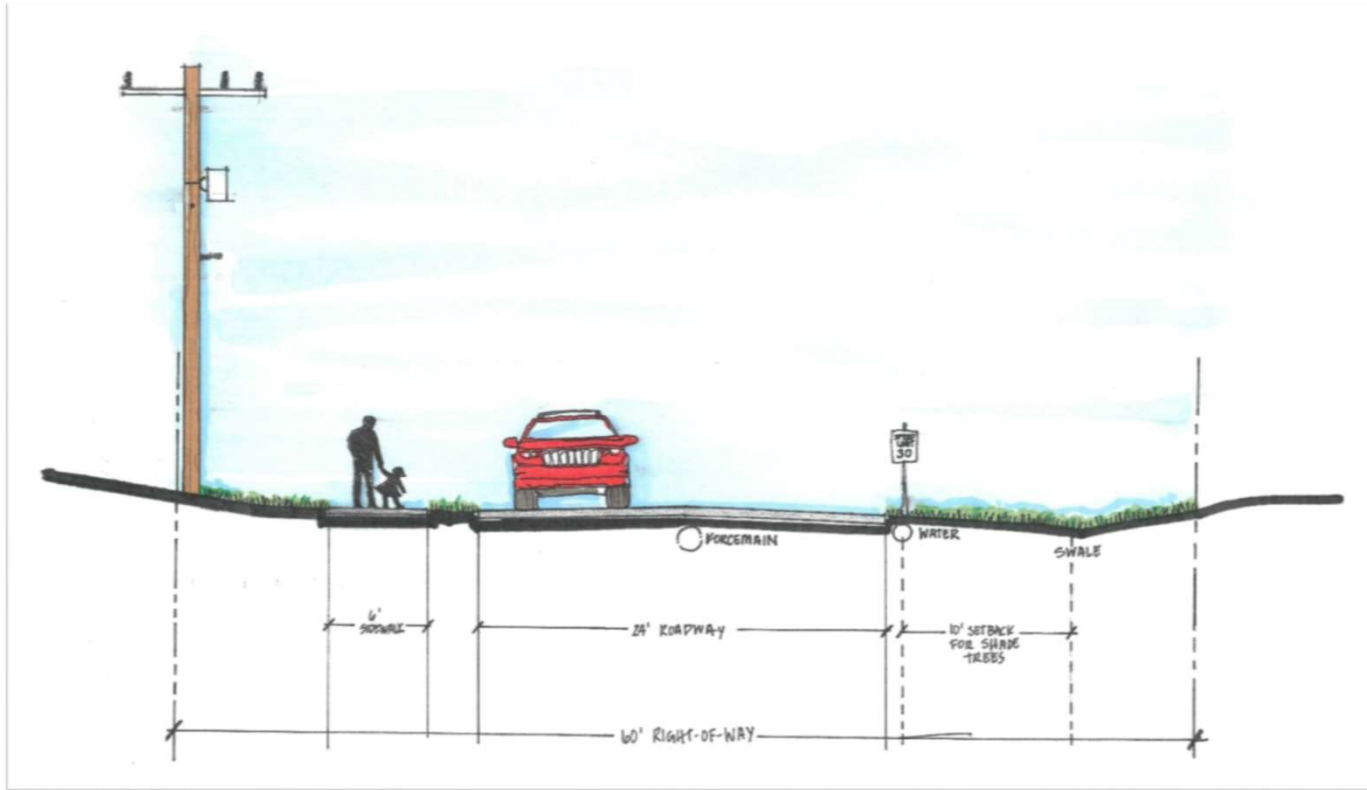
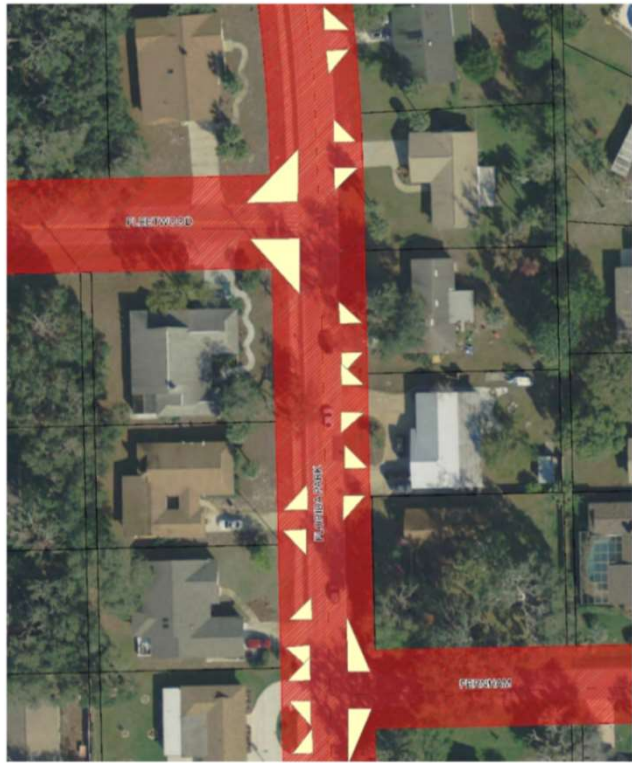
Study Conclusion:

“No sensor saw any significant events, exceeding any NAAQS, during the month of August.”

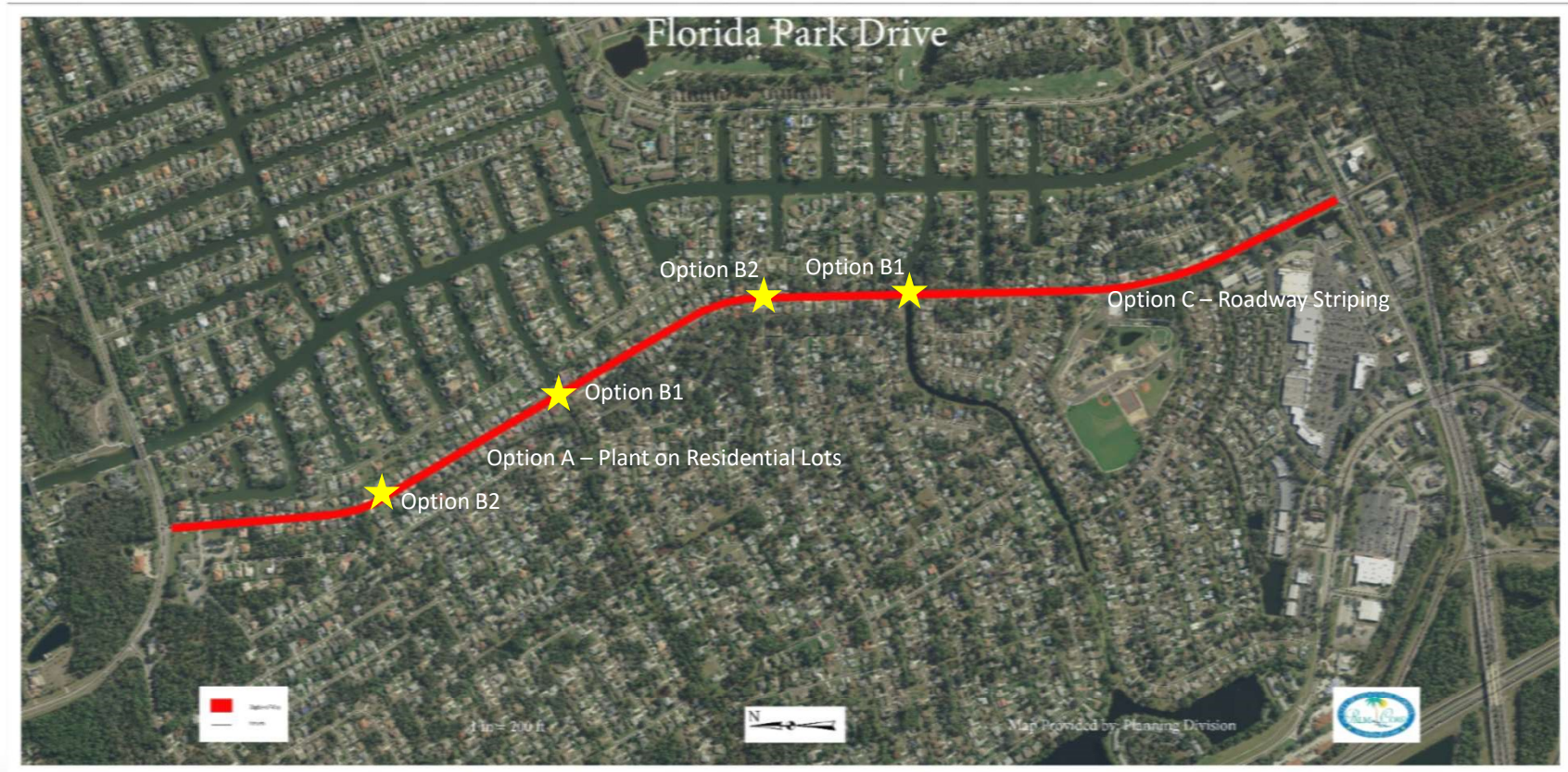


Landscape Opportunities

Landscape Opportunities – Existing Conditions



Landscape Opportunities – Potential Locations



Landscape Opportunities – Option A

Option A – Landscape Design Services for landscaping on individual residents' properties (151 residential lots)

- Buffering landscapes planted on the resident's property.
- City Landscape Architect's and Environmental Planning Technician's provide design services at no charge as requested by individual residents.
- All landscape purchasing and installation would be the responsibility of the individual homeowner.*

*Grant Program (30+ years): City may offer limited grants on an annual basis to cover the cost of landscape materials.

- FY20 = \$50,000 (20-40 lots)
- FY21+ = \$5,000 (2-4 lots per year)



Landscape Opportunities – Option A



Landscape Opportunities – Options B1 or B2

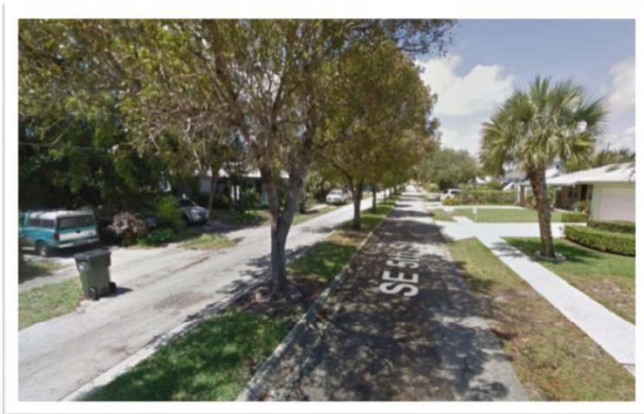
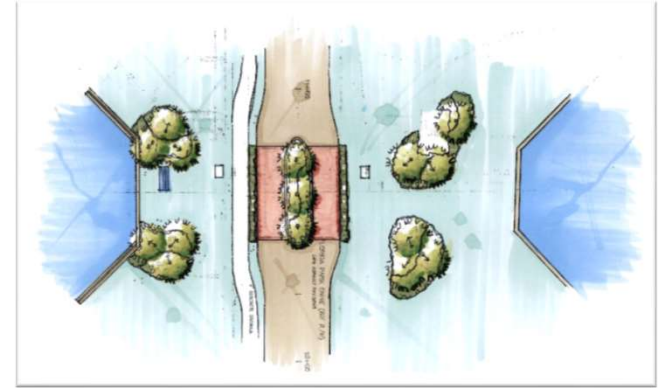
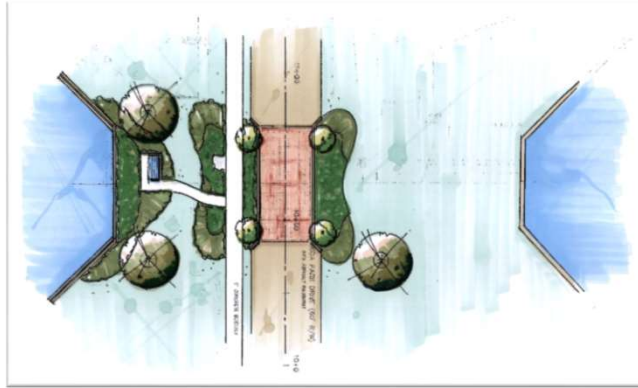
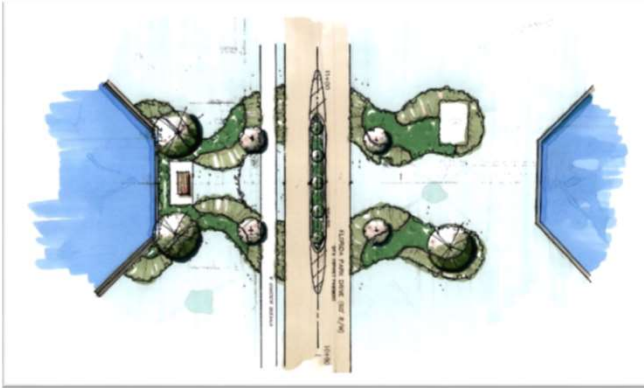
Option B1 – Landscape/Hardscape Features at Two Canal Easement Areas

Potential Improvements:

- Benches w/ associated trash/recycle receptacles.
- Plant Shade trees, palms and understory trees.
- Plant shrubs and groundcovers.



Landscape Opportunities – Option B1



Landscape Opportunities – Option B2*

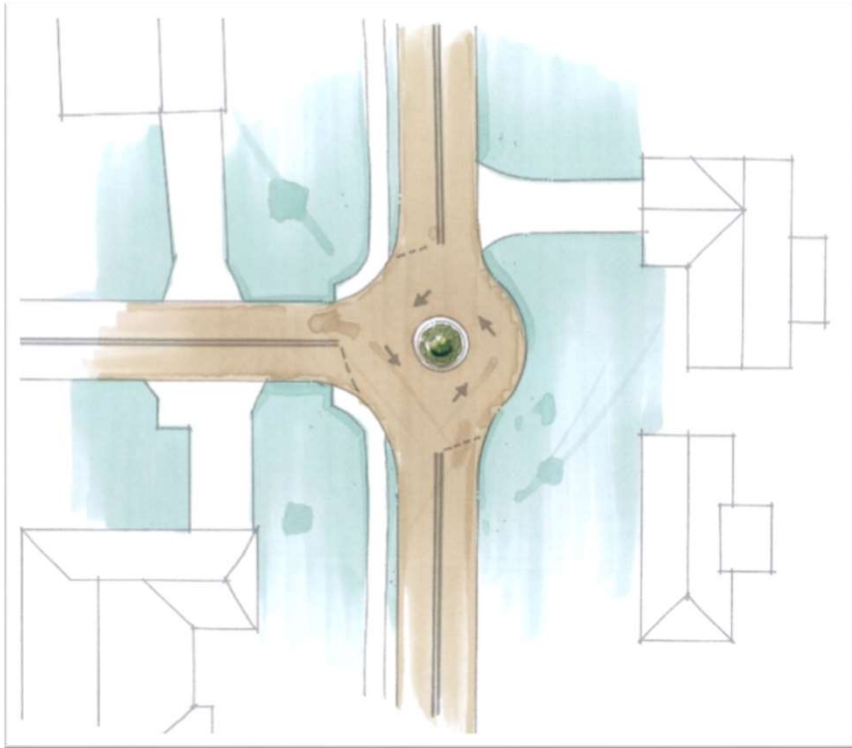


Option B2 –
Landscape/Hardscape Features
at Two Intersections

- Road roundabout addition
- Associated landscape additions/improvements

*May not be technically feasible

Landscape Opportunities – Option B2



Landscape Opportunities – Option C



Option C – Road Way Striping

- Narrow Lanes with New Striping Placement
- To be done in the Future with Roadway Resurfacing

Landscape Opportunities – Summary

Option A Residential Property Owner

- Voluntary participation
- Residents
- Buffer for resident
- Cost Opinion \$1,250 to \$2,500 per lot (151 lots including 10 vacant)

Long Term Project

Option B1 or B2 Canal Ends or Intersections

- | | |
|--|--|
| <ul style="list-style-type: none">• Benches• Shade• Traffic Calming• Impedes large truck movement• Cost Opinion \$125,000 to \$175,000 | <ul style="list-style-type: none">• Traffic Calming• Eliminates stop signs• Impedes large truck movement• Cost Opinion \$500,000 to \$600,000 |
|--|--|

Future – Requires Funding

Option C Striping

- Traffic Calming
- Visual Road Diet – Reduces Average Speed
- To be done with Road Resurfacing (future)
- No Additional Cost

Future

Next Steps

Community Outreach

☒ Review of Truck Restriction & Draft Ordinance with Residents

September 23, 2019

☐ Ordinance Presentation

1st Reading: November 5th

2nd Reading: November 19th

☐ Public Meeting with Florida Park Drive Residents (Optional)

Meeting (Community Center): TBD

☐ Public Notifications

Contractors, Business Owners, Island Walk Property Manager, Mapping App Contacts

☐ City Council

Present Feedback From Public Meeting and Obtain Direction for Landscape Option(s)



Questions?



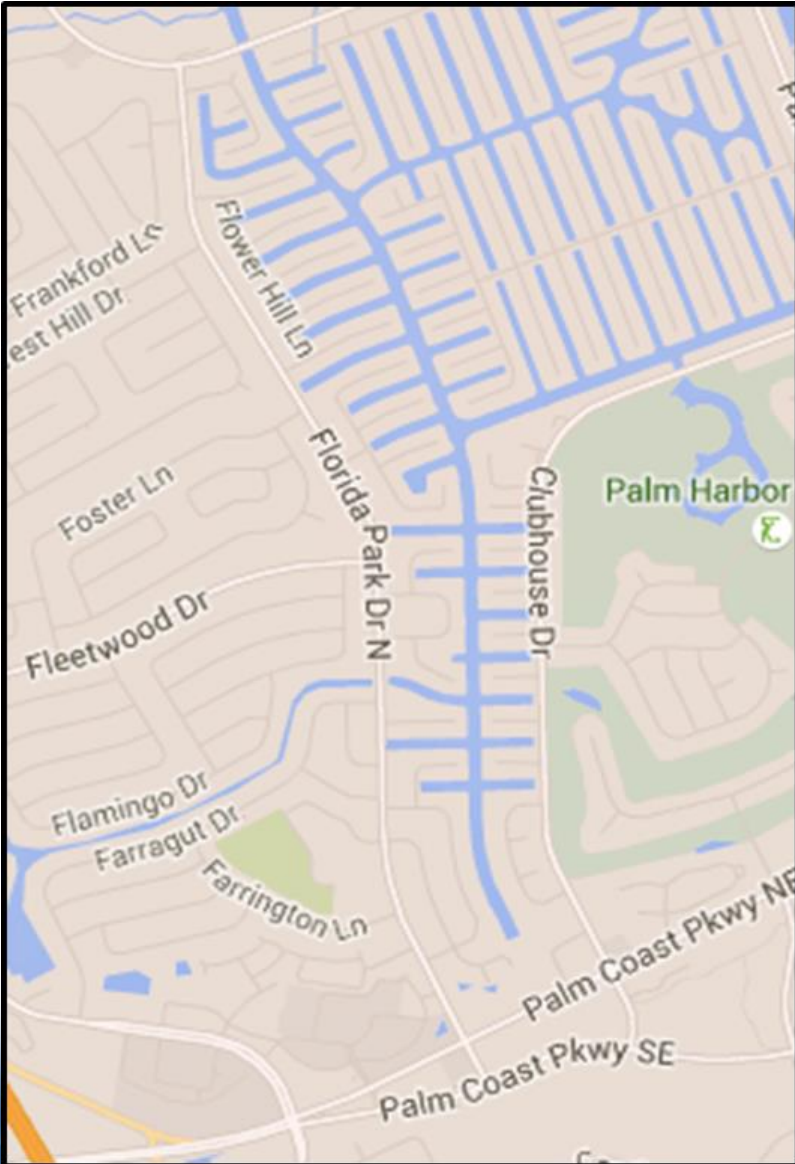


Florida Park Drive

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- **Truck Restriction**
- **Noise Study**
- **Air Quality Study**
- **Landscape / Traffic Calming Opportunities**

Signage

Speed Limit & Radar Enforced Signage



- ✓ Verified consistency – At least 4 speed limit signs in each direction
- ✓ Add radar enforced plaque at entry speed limit signage

Completed: Week of July 1st

Speed Limit & Radar Enforced Signage



Truck Restriction

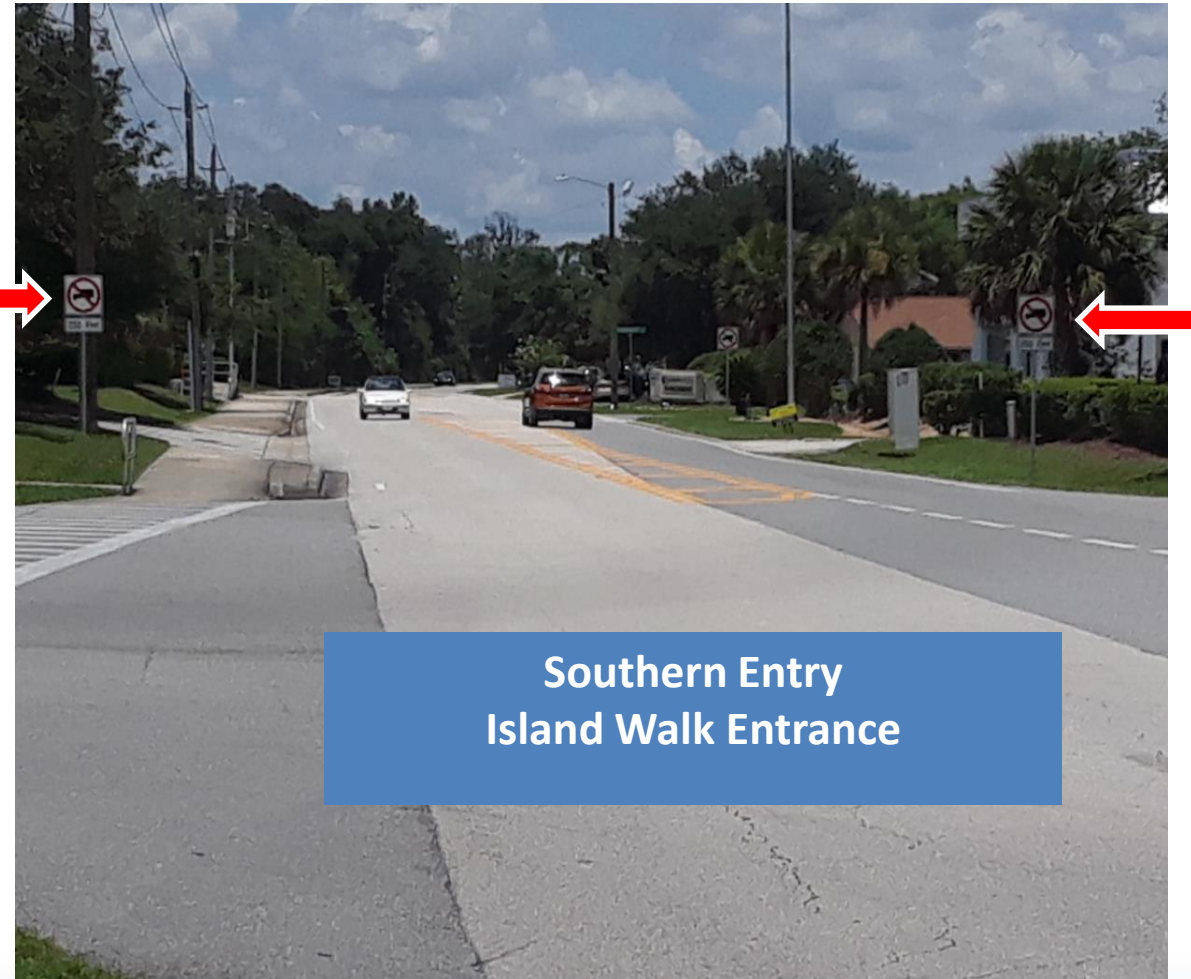
Truck Restriction



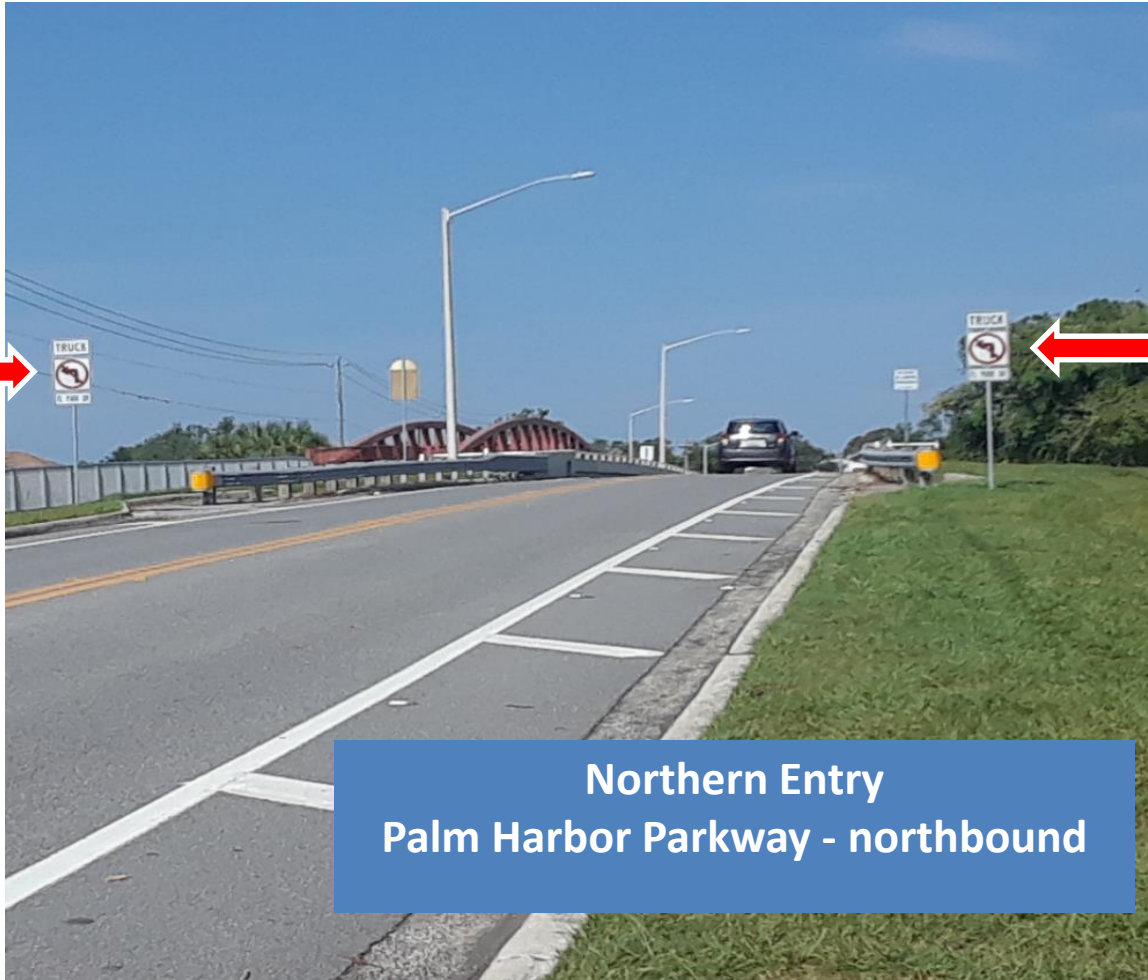
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No Trucks - Signage



No Truck - Signage



Truck Validation

- **City Traffic Count May 23, 2019**
- **Resident Video Observation May 24, 2019**

Truck Validation – Truck Designations

Light Trucks



Light Trucks



Truck Validation – Truck Designations

Heavy Trucks



Heavy Trucks



Truck Validation – Truck Counts

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Truck Restriction – Signage & Outreach

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- Add Signage to Identify Alternate Truck Routes
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- Coordination with Sheriff's Office For Enforcement (Ongoing)

Noise

Noise Impact Analysis

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Air Quality

Air Quality Study

☑ Base Line Monitoring for 2 Roadway Sampling Points

July 30, 2019 to August 30, 2019

- (CO)
- P10 (fungus, mold, pollen)
- P2.5 (non-combusted or partially combusted gas)

☑ Final Report

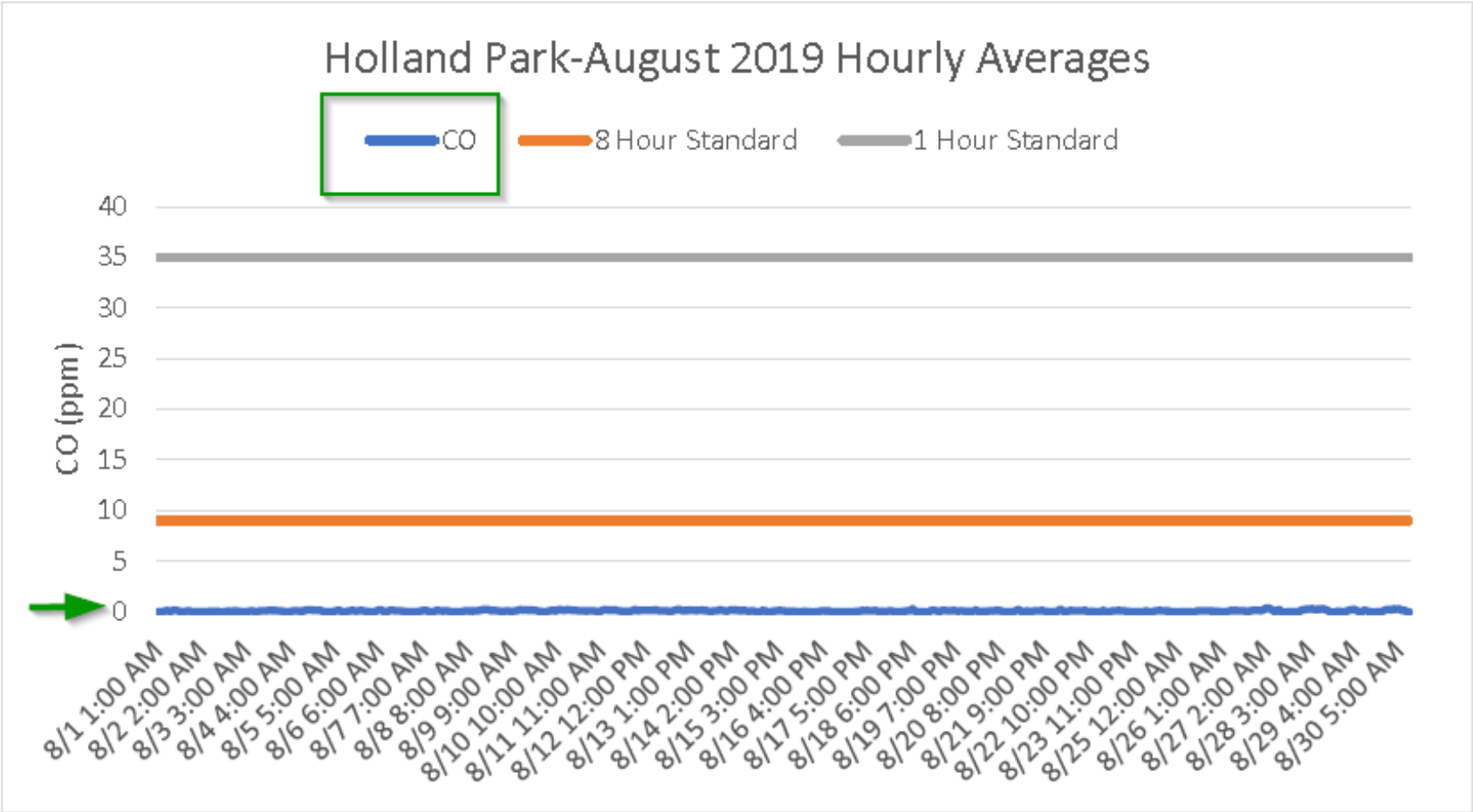
Received September 20, 2019

Air Quality Study - CO

Maximum Acceptable 1-hour standard

Maximum Acceptable 8-hour standard

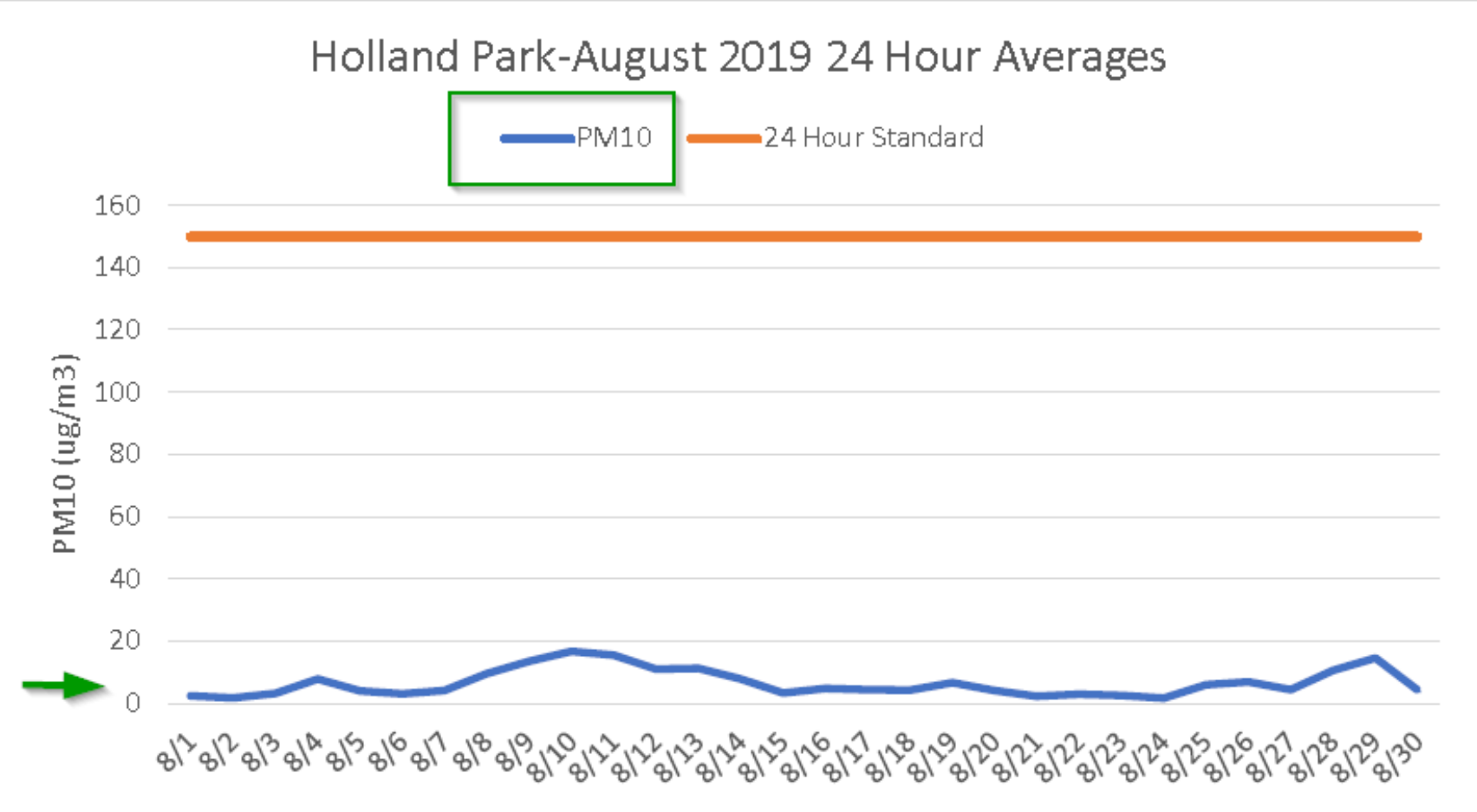
Measured Values



Air Quality Study – PM10

Maximum Acceptable 24-hour standard

Measured Values



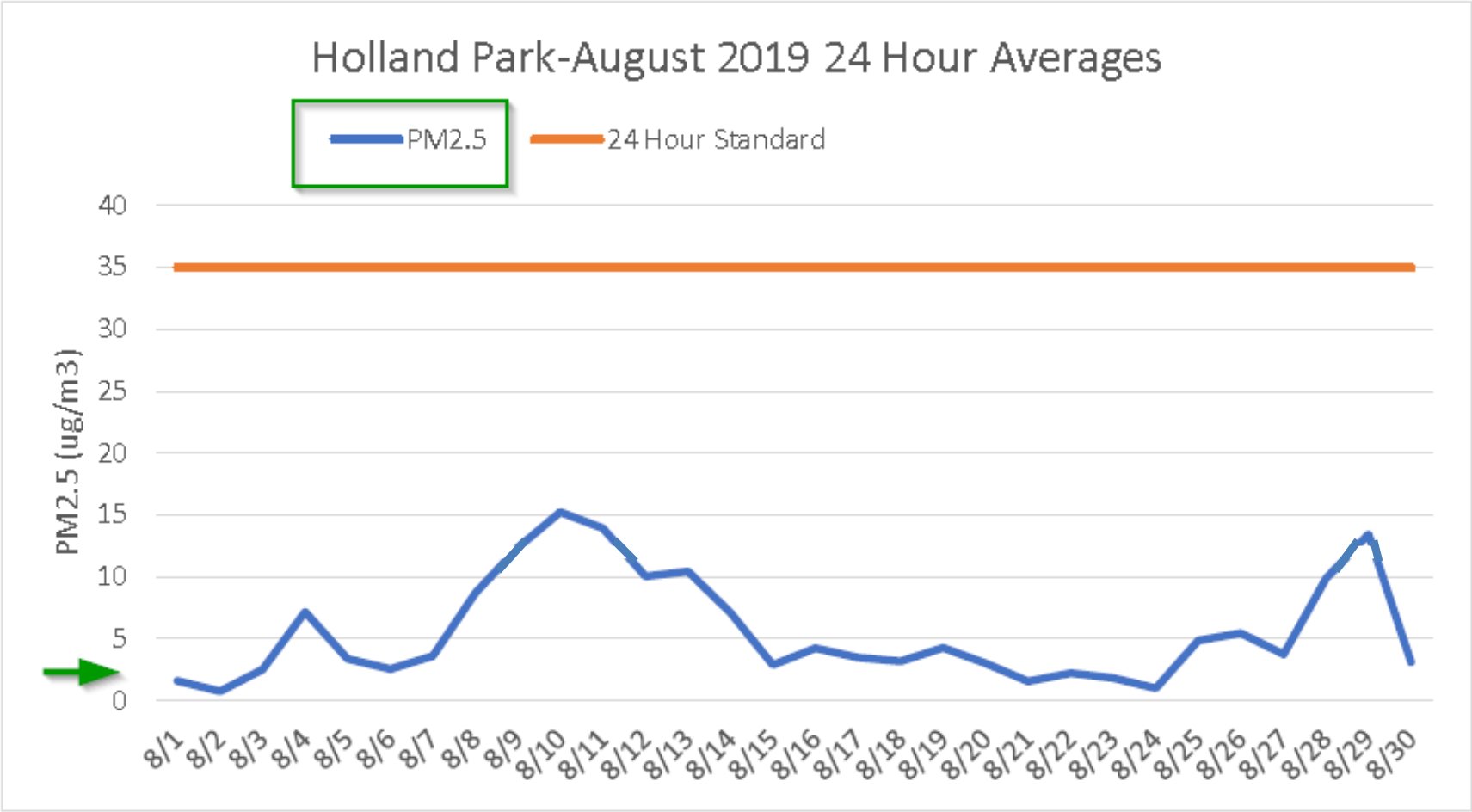
Fungus, Mold, Pollen



Air Quality Study – PM2.5

Maximum Acceptable 24-hour standard

Measured Values



Partially Combusted Gases



Air Study - Conclusion

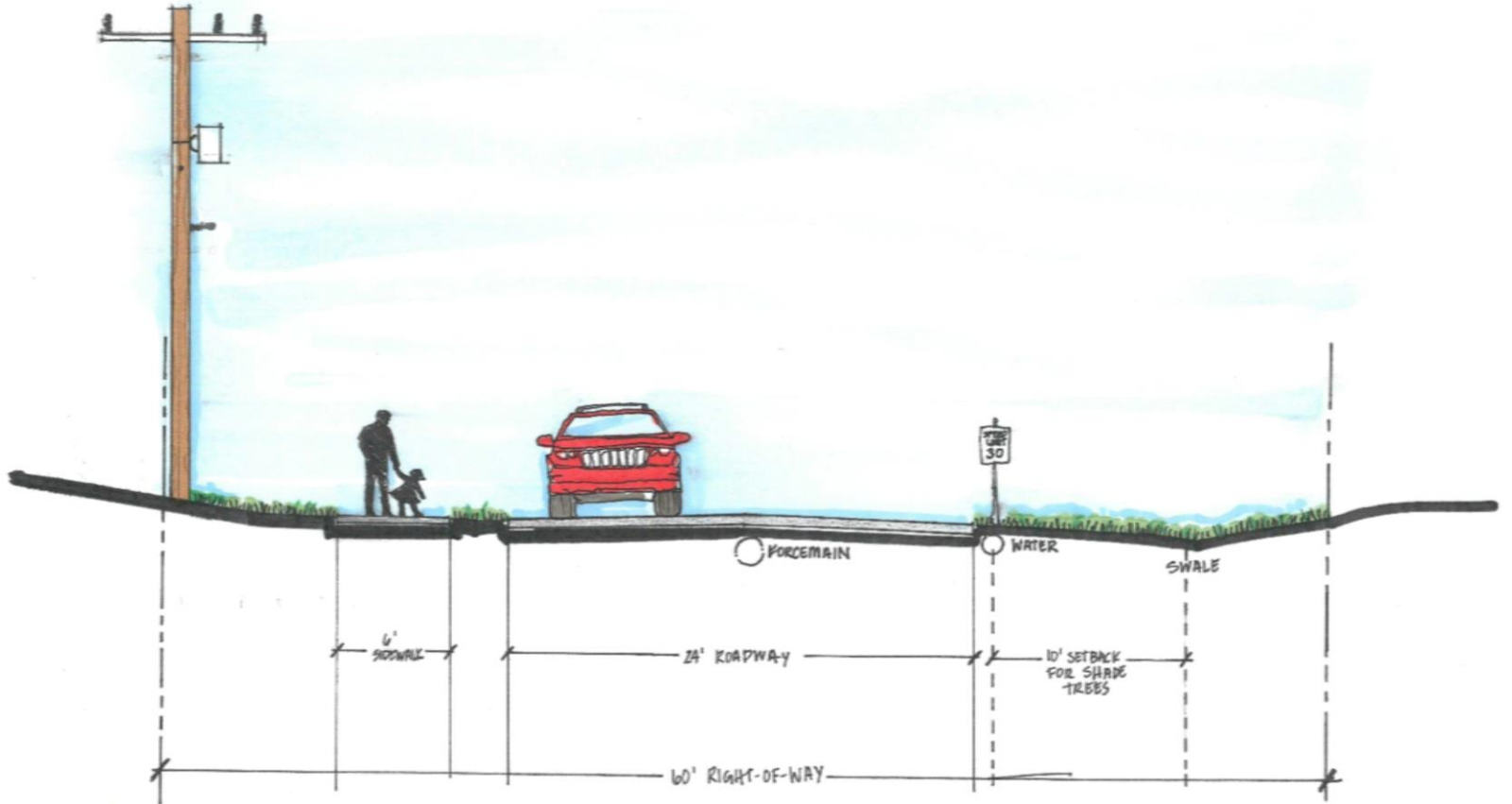
Study Conclusion:

“No sensor saw any significant events, exceeding any NAAQS, during the month of August.”

NAAQS - National Ambient Air Quality Standards

Landscape / Traffic Calming Opportunities

Landscape / Traffic Calming – Existing Conditions



Landscape / Traffic Calming – Potential Locations



Landscape / Traffic Calming – Option A*

Option A – Landscape Design Services for landscaping on individual residents' properties (151 residential lots)

- Buffering landscapes planted on the resident's property.
- City Landscape Architect's and Environmental Planning Technician's provide design services at no charge as requested by individual residents.
- All landscape purchasing and installation would be the responsibility of the individual homeowner.

*Grant Program (ongoing): City may offer limited grants on an annual basis to cover the cost of landscape materials.

- FY2020 = \$50,000 (~20 lots)
- FY2021+ = \$5,000 (~2 lots per year)



Landscape / Calming – Option A (Existing)



Landscape / Calming – Option A (Proposed)



Landscape / Traffic Calming – Options B1 or B2

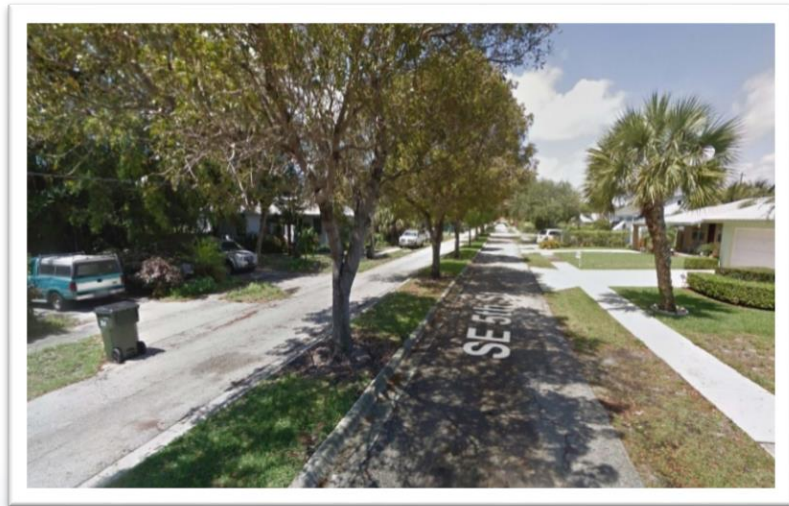
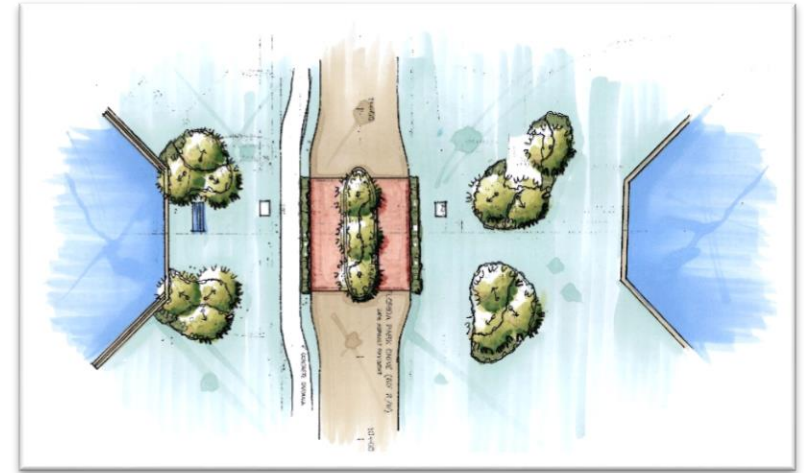
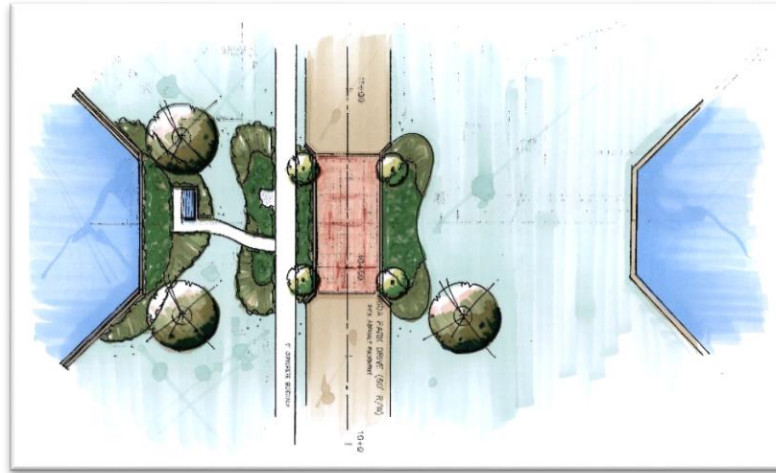
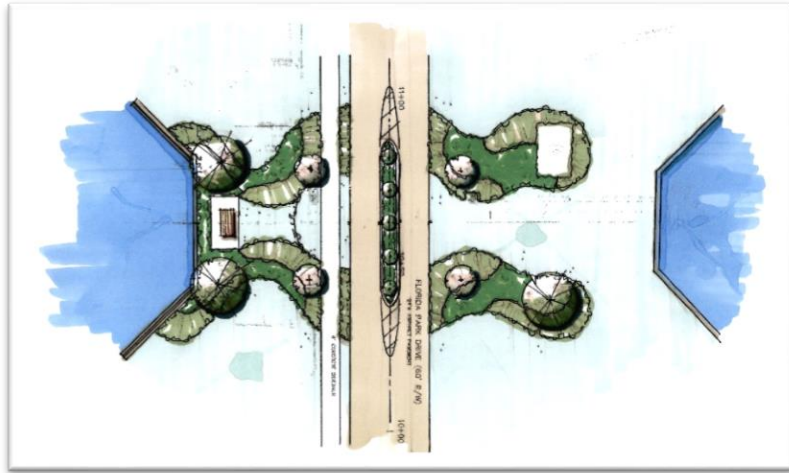
Option B1 – Landscape/Hardscape Features at Two Canal Easement Areas

Potential Improvements:

- Benches w/ associated trash/recycle receptacles.
- Plant Shade trees, palms and understory trees.
- Plant shrubs and groundcovers.



Landscape / Traffic Calming – Option B1



Landscape / Traffic Calming – Option B2*

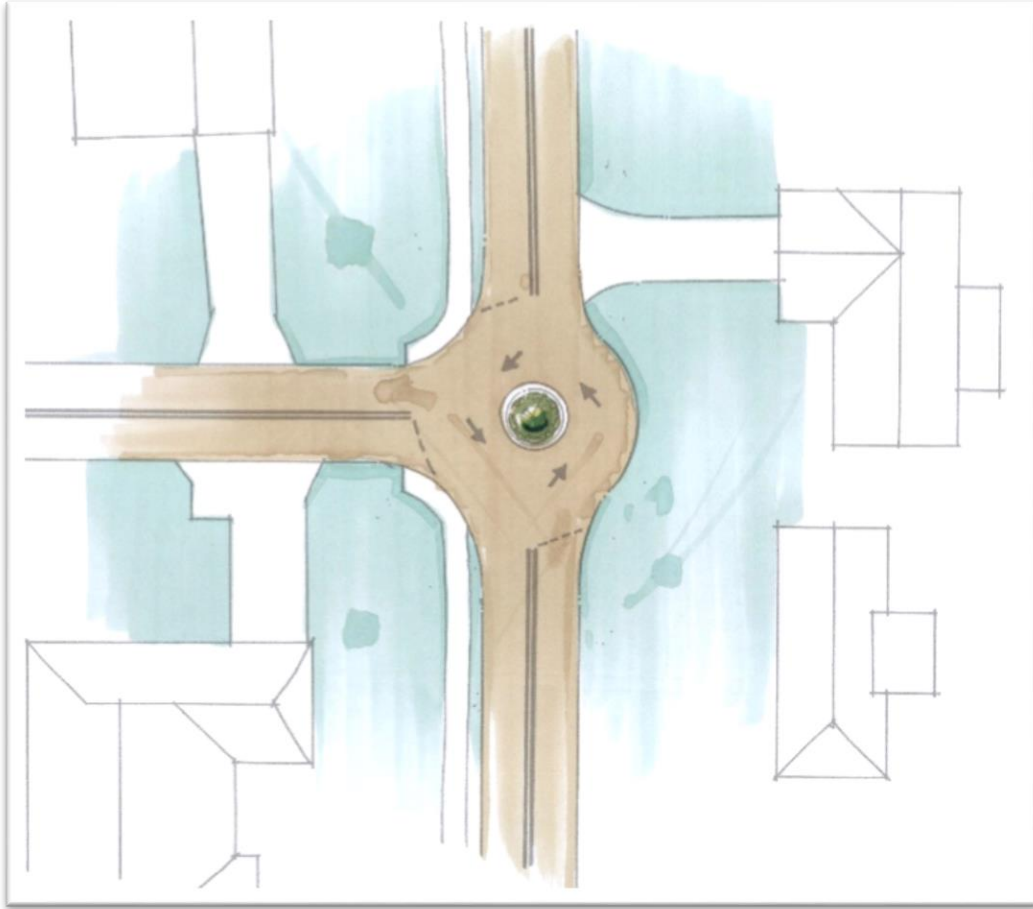


**Option B2 –
Landscape/Hardscape Features
at Two Intersections**

- Road roundabout addition
- Associated landscape additions/improvements

***Subject to field conditions**

Landscape / Traffic Calming – Option B2



Landscape / Traffic Calming – Option C



Option C – Road Way Striping

- Narrow Lanes with New Striping Placement
- To be done in the Future with Roadway Resurfacing

Landscape / Traffic Calming – Summary

Option A Residential Property Owner

- Voluntary participation
- Residents
- Buffer for resident
- Cost Opinion \$2,500 per lot (151 lots including 10 vacant)

Long Term Project

Option B1 or B2 Canal Ends or Intersections

- | | |
|--|--|
| <ul style="list-style-type: none">• Benches• Shade• Traffic Calming• Impedes large truck movement• Cost Opinion \$150,000 to \$300,000 | <ul style="list-style-type: none">• Traffic Calming• Eliminates stop signs• Impedes large truck movement• Cost Opinion \$300,000 to \$600,000 |
|--|--|

Future – Requires Funding

Option C Striping

- Traffic Calming
- Visual Road Diet – Reduces Average Speed
- To be done with Road Resurfacing (future)
- \$60,000 cost - included in resurfacing budget

Upcoming

Next Steps

Community Outreach

☒ Review of Truck Restriction & Draft Ordinance with Residents

September 23, 2019

☐ Ordinance Presentation

1st Reading: November 5th

2nd Reading: November 19th

☐ Grant Program (Optional)

Develop Grant Program

☐ Public Meeting with Florida Park Drive Residents (Optional)

Meeting (Community Center): Grant Program Showcase

☐ Public Notifications

Contractors, Business Owners, Island Walk Property Manager, Mapping App Contacts

☐ City Council

Present Feedback From Public Meeting and & Grant Program

Questions?



City of Palm Coast, Florida Agenda Item

Agenda Date: 10/29/2019

Department	IT ENTERPRISE	Amount
Item Key		Account
Subject	PRESENTATION - PUBLIC PRIVATE PARTNERSHIP REQUEST FOR SOLUTIONS	
Background : Staff will provide a presentation/summary of the Public-Private Partnership Request for Solutions Process, Vendor Responses, Evaluation Results and Proposed Next Steps.		
Recommended Action : For presentation and Council direction.		



Public Private Partnership

Evaluation Summary

Background & Process

Council Priority: Enhancing Fiber Infrastructure & Exploring “Smart City” Initiatives (FY2019/2020)

Worked with Magellan Advisors to Develop a Scope

TIMELINE:

Posted P3 RFS:	May 22, 2019	5 Responses – Hotwire Communications, MOX Networks, Spectrum, Point Broadband, Waterleaf International LLC.
Closed P3 RFS:	July 11, 2019	
1 st Round (Evaluation & Scoring)	July 26, 2019	Top 3: Hotwire Communications, Waterleaf International LLC, Point Broadband
2 nd Round (Live Interviews)	September 18, 2019	
Final Evaluations and Scoring	October 1, 2019	
City Council Presentation	October 29, 2019	Final Ranking #1 Hotwire Communications #2 Waterleaf International LLC #3 Point Broadband



Evaluation Criteria

1. Overall Quality of Response & Suggested Business Model
2. References
3. Experience, Access to capital and Smart City Examples
4. Commitment & Team members
5. Examples of Similar P3 Relationships
6. Implementation & Deployment



Hotwire Option A

- 120 Month Ramp/Buildout
 - Build out commercial and congested residential – 90% access with 70% build out
- Buildout Risk/Cost
 - City of Palm Coast – \$0 (0%)
 - Hotwire Communications - \$128.5MM (100%)
- Revenue – 5%/95% revenue split after Y5
 - 100% revenue to HWC Y1-Y5
 - \$310K Data services to the COPC each year for duration
 - 5% Rev to CPC Y6-20
- Ownership -After 20 years
 - Palm Coast – original fiber ring
 - Hotwire – All equipment and new fiber



Hotwire Option B

- Carrier Model
- 18 Month Ramp/Buildout
- Shared Risk
 - City of Palm Coast – 30% – \$52.5M
 - Hotwire Communications – 70% - \$137.4M
- Revenue – 30/70 Split on Data
- Ownership
 - After 20 year contract – Palm Coast
- Constituents Reached within 18 Months



Hotwire Communications

Advantages of Option A

- No City capital investment required
- No impact on current City revenue
- Reduced risk for the COPC
- Strong FL presence and commitment to establishing local team
- Established significant regional network presence
- COPC retains ownership of fiber ring and existing revenues

Disadvantages of Option A

- Slower roll out of FTTP
- No revenue sharing first 5 years
- Reduced revenue sharing
- Limited smart city applications experience



Waterleaf International LLC. & Point Broadband

Advantages

- Technical Experience
 - Design – Build
- Strong financial partner
- Smart City expertise
- Committed annual revenue share payment, starts year 1
- Creation of a special purpose entity

Disadvantages

- Newly established partnership with multiple stakeholders
- Financial partner has controlling interest
- No current local presence
- No current network assets
- No examples of municipal experience



Next Steps

- Magellan Advisor's to perform due diligence

- Reference checks

COPC staff and Magellan to further explore option A with Hotwire Communications

- Project Design
- Timelines
- Financials

- Develop key points to draft memo of understanding (MOU) – November 2019
- Scope of work development meetings with the selected vendor – November 2019
- Present scope of work and draft MOU to City Council and seek approval to move forward to contracts – January 2020



Questions?



City of Palm Coast, Florida

Agenda Item

Agenda Date : 10/29/2019

Department	PLANNING	Amount
Item Key	7284	Account
Subject	RESOLUTION 2019-XX APPROVING A REQUEST TO THE STATE OF FLORIDA FOR AN EASEMENT TO CONSTRUCT PART OF THE LEHIGH TRAIL TRAILHEAD	
Background : The City is currently designing a trailhead that will provide paved parking and restroom facilities for users of the Lehigh Trail. The trailhead will be located adjacent to the Lehigh Trail along Belle Terre Parkway. The site adjacent to the trail (which is owned by the City) is encumbered by a Florida Power & Light (FP&L) easement which severely limits vertical development on the property (i.e. buildings). The surface parking for the trailhead will be located within the easement. Due to the limitations on vertical development, it is necessary to locate the restroom building on property owned by the State of Florida. As part of the request for an easement, the State requires an approved resolution from the City.		
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING A REQUEST TO THE STATE OF FLORIDA FOR AN EASEMENT TO CONSTRUCT PART OF THE LEHIGH TRAIL TRAILHEAD		

RESOLUTION 2019-_____
REQUEST FOR EASEMENT FROM THE STATE OF FLORIDA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, REQUESTING AN EASEMENT FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND (TIITF) OF THE STATE OF FLORIDA TO CONSTRUCT IMPROVEMENTS FOR THE LEHIGH TRAILHEAD; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Lehigh Trail is a 6.8 paved multi-use trail that runs through the heart of Palm Coast; and

WHEREAS, the Lehigh Trail is a popular destination for residents and visitors who wish to enjoy a pleasant walk or bicycle ride; and

WHEREAS, the location north of the Palm Coast Tennis Center on Belle Terre Parkway has served as a de-facto trailhead for users of the Lehigh Trail;

WHEREAS, the City property at this location are limited for development due to constraints created by an FPL easement; and

WHEREAS, the constraints of the FPL easement on City property necessitates the request for an easement to construct improvements on land owned by the State of Florida; and

WHEREAS, the City Council is desirous of requesting an easement from the State of Florida to improve the trailhead facilities that serve the residents and other users of the Lehigh Trail.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF REQUEST FOR AN EASEMENT. The City Council of the City of Palm Coast hereby requests an easement from the State of Florida for

construction and maintenance of a restroom facility to serve users of the Lehigh Trail as described in Exhibit "A".

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the agreement as the result of requested easement depicted in Exhibit "A."

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

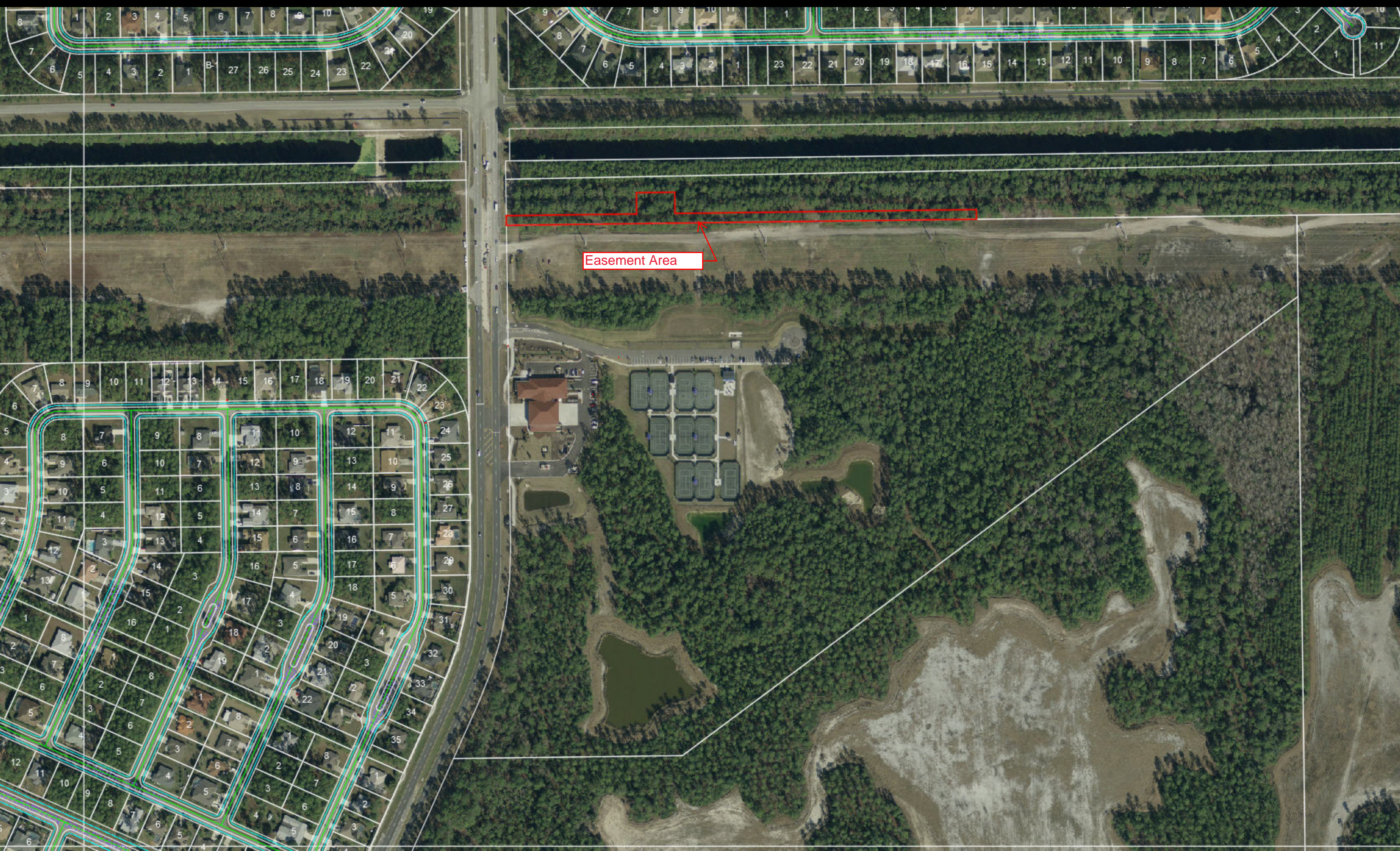
VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

Attachments: Exhibit A – Sketch and Description of Proposed Easement

ATTACHMENT 1 - AERIAL OF PROPOSED EASEMENT FOR LEHIGH TRAIL RESTROOM FACILITY





Request for Easement for Lehigh Trail Trailhead

Find Your Florida

Lehigh Trailhead



- Location is already used as unimproved trailhead
- FPL Easement on City property limits vertical development
- Lease from State for construction of restroom

Lehigh Trailhead

Staff recommends approval of request for easement from the State of Florida for the Lehigh Trail Trailhead





Questions?

Find Your Florida

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Stormwater & Engineering	Amount	\$72,500.00
Item Key		Account	#54029082-063000-55003
Subject	RESOLUTION 2019-XX APPROVING A GRANT AGREEMENT FOR THE PURCHASE AND INSTALLATION OF GENERATORS AT 5 PUMP STATIONS		
Background : Previously, the City received approval of eight Hazard Mitigation Grant Programs (HMGP) from the Florida Division of Emergency Management (FDEM) as a result of the Hurricane Matthew Disaster Declaration (FEMA-4283-DR-FL). The projects will begin construction soon. After Hurricane Irma Disaster Declaration (FEMA-4337-DR-FL), City staff evaluated the remaining sewer pump stations and chose the top five pump stations that crucially need generators, City staff submitted for another HMGP application for the addition of five generators at the sanitary sewer pump stations throughout the City. The City of Palm Coast has received notification that the application is approved for cost share funding by the Federal Emergency Management agency (FEMA). The pump stations serve as critical facilities in the wastewater collection system and these requested auxiliary power sources allow for normal operation during emergency events. The City of Palm Coast will receive a separate Federally-funded Subaward and Grant Agreement for the five pump station generators. The agreement has an end date of June 30, 2021. FDEM serves as a Sub-Recipient, (a non-Federal entity that receives a Subaward from a pass-through entity to carry out part of a Federal Program) and will be managing contract compliance on behalf of FEMA. The federal share obligation for the grant is \$217,500.00, which is 75% of the costs for the generators. The City's share of \$72,500.00 for the pump station generator project is in the Utility 5-Year Capital Improvement Plan and is budgeted for Fiscal Year 2020-2021.			
SOURCE OF FUNDS WORKSHEET FY 2019			
Impr-lift station replacement 54029082-063000-85003			\$ 3,850,000.00
Total Expended/Encumbered to Date.....			\$
Pending Work Orders/Contracts.....			\$
Current (WO/Contract).....			\$ 72,500.00
Balance			\$ 3,733,477.00
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING A GRANT AGREEMENT BETWEEN THE CITY OF PALM COAST AND FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF GENERATORS AT FIVE PUMP STATIONS			

RESOLUTION 2019-_____
HAZARDOUS MITIGATION GRANT PROGRAM
PUMP STATION GENERATORS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT, A PASS-THOUGH ENTITY TO THE FEDERAL EMERGENCY MANAGEMENT FOR THE HAZARDOUS MITIGATION GRANT PROGRAM PUMP STATION GENERATORS PROEJCT; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Flagler County and the State of Florida were directly impacted by Hurricane Irma which resulted in a Presidential Disaster Declaration and availability of Hazard Mitigation Grant Program (HMGP) funding; and

WHEREAS, to qualify for HMGP funding, a project shall conform to the funding priorities for the disaster, as established in the appropriate Local Mitigation Strategy (LMS) Workgroup; and,

WHEREAS, the City of Palm Coast and other community stakeholders ranked LMS project priorities in December 2017 which included five generators for Wastewater Collection Pump and Lift stations, determined to be critical facilities during emergency events; and,

WHEREAS, the agreement for five generators was awarded June7, 2019, with an end date of June 30, 2021, for a federal share obligation of \$217,500.00, (75% of the costs for the generators).

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF GRANT AGREEMENT. The City Council of the City of Palm Coast hereby approves a grant agreement with the Florida Division of Emergency Management, a pass-through entity to the Federal Emergency Management for

the Hazardous Mitigation Grant Program Pump Station Generators Project, as attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A"- Federally-Funded Subaward and Grant Agreement

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Palm Coast
PROJECT #:	4337-118-R
PROJECT TITLE:	Generator Project
CONTRACT #:	H0242
MODIFICATION #:	NA

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Brian Matthews Environmental Compliance Manager City of Palm Coast 2 Utility Drive Palm Coast, Florida 32137

Enclosed is your copy of the proposed contract/modification between **City of Palm Coast** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
<input type="checkbox"/>	This form is required to be included with all Reviews, Approvals, and Submittal
<input type="checkbox"/>	Two (2) Copies printed for Approval
<input type="checkbox"/>	Printed Single-sided (<i>If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature</i>)
<input type="checkbox"/>	Reviewed and Approved
<input type="checkbox"/>	Signed and Dated by Official Representative (<i>blue ink</i>)
<input type="checkbox"/>	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
<input type="checkbox"/>	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (<input type="checkbox"/> N/A for Modifications)
<input type="checkbox"/>	Two Signed and dated Originals mailed to FDEM - Tallahassee Florida Division of Emergency Management Mitigation Bureau – HMGP 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100 Attention – Grant Specialist –Veronica S. Ash

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4578 or email me at Renee.singh@em.myflorida.com.

Agreement Number: H0242

Project Number: 4337-118-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.74, “pass-through entity” means “a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.93, “Sub-Recipient” means “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.38, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.92, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	CITY OF PALM COAST
Sub-Recipient's unique entity identifier:	59-3614294
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	June 7, 2019
Subaward Period of Performance Start and End Date:	Upon Execution thru June 30, 2021
Amount of Federal Funds Obligated by this Agreement:	\$217,500.00
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	\$217,500.00
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	\$217,500.00
Federal award project description (see FFATA):	Generator Project
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Renee.singh@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and the City of Palm Coast, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Renee Singh, Project Manager
Florida Division of Emergency Management
Bureau of Mitigation
2702 Directors Row
Orlando, Florida 32809-5631
Telephone: (850) 815-4578
Email: Renee.singh@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Brian Matthews, Environmental Compliance Manager
City of Palm Coast
2 Utility Drive
Palm Coast, Florida 32137
Telephone: (386) 986-2353
Email: bmatthews@palmcoastgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK.

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT.

This Agreement shall begin upon execution by both parties and shall end on **June 30, 2021**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$217,500.00.**
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a “performance goal”, which is defined in 2 C.F.R. §200.76 as “a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared.” It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient “relate financial data to performance accomplishments of the Federal award.”

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 (“Compensation—personal services”) and 2 C.F.R. §200.431 (“Compensation—fringe benefits”). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as “allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages.” Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,

iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

- a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.
- b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.
- c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(11)AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”

c. When conducting an audit of the Sub-Recipient’s performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. §200.50, GAGAS, “also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.”

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING.

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement; as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15)DEFAULT.

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES.

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17)TERMINATION.

a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”).

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall “maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division’s review and comments shall not constitute an approval of the solicitation. Regardless of the Division’s review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. “[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage” otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 (“Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms”).

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions

(20) PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22)MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list 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 a public entity, and may not transact business with any public entity in

excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

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

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

I. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, 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 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.

ii. 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 Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. 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. Code. 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.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION.

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26)EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.

iii. 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.

iv. 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.

v. 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.

vi. 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.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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.

b. The Sub-Recipient 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.

c. The Sub-Recipient 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.

d. The Sub-Recipient 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 Sub-Recipient 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 Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

- 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. pt. 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 the 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.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its 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).
- ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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.

(32)CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33)ASSURANCES.

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: CITY OF PALM COAST

By: _____

Name and Title: _____

Date: _____

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Jared Moskowitz, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: **\$217,500.00**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Generators for Critical Facilities
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to provide protection to wastewater collection systems, in Palm Coast, Volusia County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-118-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA). The project is for the purchase and installation of an emergency system to reduce and/or mitigate the damage that might otherwise occur from severe weather or other hazards.

The Sub-Recipient, City of Palm Coast agrees to administer and complete the project per scope of work as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations, and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient, the City of Palm Coast proposes to install backup power supply generators on concrete pads with integrated automatic power transfer switches at various locations in the wastewater collection system in the City of Palm Coast, Florida.

The HMGP project shall provide protection to these facilities and this shall be accomplished by the installation of permanent generators. The generators shall allow the wastewater-pumping stations to continue operations during power outage caused by major events and prevent sanitary sewer overflows and the hazards associated with them.

The generators shall be protected against a 500-year flood event by implementing specific activities or by locating the generators outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Project Locations:

ID#	Station	Coordinates
1)	PS-G	29.551887 -81.206035
2)	PS -35-1	29.576431 -81.254436
3)	PS-63-1	29.452907 -81.221030
4)	PS-63-2	29.465790 -81.226266
5)	PS-64-1	29.444616 -81.203731

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all Federal and State Laws and Regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient within 10 days of execution.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the procurement and installation of all products in accordance with the HMGP application and associated documentation as presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable State, Local and Federal Laws and Regulations are followed and documented, as appropriate.

The Sub-Recipient shall fully perform the approved project, as described in the application, in accordance with the approved scope of work indicated herein, the estimate of costs indicated herein, the allocation of funds indicated herein, and all applicable terms and conditions. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county building department (official), or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation shall include:

- a) Copy of permit(s), notice of commencement.
- b) Local Building Official Inspection Report and Final Approval.
- c) A copy of electrical designs, specifications and/or drawings elaborated to complete the scope.
- d) Signed and Sealed copy of the As-built plans, as applicable.
- e) Certified Letter of Completion, as applicable:

1. Affirming that the project has been completed in conformance with the approved project drawings, specifications, and scope.
 2. Certifying Compliance with all applicable codes.
- f) All Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
- g) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly Reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, and plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;

- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of providing protection to wastewater collection systems in various locations throughout the City of Palm Coast, Florida, by installing several generators on concrete pads with integrated automatic power transfer switches.

The generators shall be protected against a 500-year flood event by implementing specific activities or by locating the generators outside the SFHA and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 3) The Sub-Recipient shall submit a final copy of the completed project's As-built drawings and all necessary supporting documentation, and provide a summary of all contract scope of work changes, as applicable.
- 4) The Sub-Recipient shall submit a final copy of any electrical designs, specifications and/or drawings elaborated to complete the job.
- 5) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record, as applicable. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 6) The Sub-Recipient shall submit all Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
- 7) All installations shall be done in strict compliance with the Florida Building Code or Miami Dade Specifications. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 8) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

- 1) The Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project is delayed for a year or more after the date of

the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies must be redone.

- 2) Any change, addition or supplement to the approved mitigation measure or scope of work that alters the project (including other work not funded by FEMA, but done substantially at the same time) shall require resubmission to the Division and FEMA for reevaluation of compliance with the National Environmental Protection Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) prior to initiation of any work. Non-compliance with these requirements may jeopardize FEMA's ability to fund this project. A change in the scope of work shall be approved by the Division and FEMA in advance regardless of the budget implications.
- 3) If any ground disturbance activities occur during construction, the Sub-Recipient shall monitor ground disturbance during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.
- 4) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 2) The Division and FEMA shall approve a change in the scope of work in advance, regardless of the budget implementations.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 5) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Project approval is with the condition that the tasks, deliverables, and conditions be accomplished and submitted 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for Closeout.

This is FEMA project number **4337-118-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on June 07, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **June 30, 2021**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;

- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

State and Local Contracting:	3 Months
Design / Permitting:	3 Months
Bidding and Contracting:	3 Months
Construction / Installation:	12 Months
State and Local Inspection:	2 Months
Closeout:	1 Month
Total Period of Performance:	24 Months

BUDGET

Line Item Budget*

	Project Cost	Federal Share	Non-Federal Share
Materials:	\$226,999.00	\$170,249.25	\$56,749.75
Labor:	\$61,861.00	\$46,395.75	\$15,465.25
Fees:	\$1,140.00	\$855.00	\$285.00
<hr/>			
Initial Agreement Amount:	\$290,000.00	\$217,500.00	\$72,500.00
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$290,000.00	\$217,500.00	\$72,500.00

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

***** This project has an estimated \$0.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$1,140.00

Funding Summary

Federal Share:	\$217,500.00	(75%)
Non-Federal Share:	\$72,500.00	(25%)
Total Project Cost:	\$290,000.00	(100%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the “**Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)**” which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

**REQUEST FOR ADVANCE OR REIMBURSEMENT OF
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: CITY OF PALM COAST

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Generator Project PROJECT #: 4337-118-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0242

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount ____%	Obligated Non- Federal ____%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	<u>\$</u> _____
ADMINISTRATIVE COST	<u>\$</u> _____
APPROVED FOR PAYMENT	<u>\$</u> _____
	GOVERNOR'S AUTHORIZED REPRESENTATIVE _____
	DATE _____

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MTIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: CITY OF PALM COAST PAYMENT #: _____
PROJECT TYPE: Generator Project PROJECT #: 4337-118-R
PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0242

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
<i>This payment represents % completion of the project.</i>					TOTAL

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: CITY OF PALM COAST

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.</p>
--

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: CITY OF PALM COAST PROJECT #: 4337-118-R
PROJECT TYPE: Generator Project CONTRACT #: H0242
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: \$ _____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20 \$ _____ Oct-Dec 20 \$ _____ Jan-Mar 20 \$ _____ Apr-Jun 20 \$ _____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under **Issues** below*)

Percentage of Work Completed (*may be confirmed by state inspectors*): _____ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments**/Elaboration:

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form:

Phone: _____

~ To be completed by Division staff ~

Date Reviewed: _____ Reviewer: _____

Actions: _____

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

CITY OF PALM COAST
Sub-Recipient's Name

H0242
DEM Contract Number

4337-118-R
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-118-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$217,500.00

OBLIGATION/ACTION DATE: June 7, 2019

SUBAWARD DATE (if applicable): _____

DUNS#: 174541107

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient, the City of Palm Coast proposes to install backup power supply generators on concrete pads with integrated automatic power transfer switches at various locations in the wastewater collection system in the City of Palm Coast, Florida.

The HMGP project shall provide protection to these facilities and this shall be accomplished by the installation of permanent generators. The generators shall allow the wastewater-pumping stations to continue operations during power outage caused by major events and prevent sanitary sewer overflows and the hazards associated with them.

The generator shall be protected against a 500-year flood event by implementing specific activities or by locating the generator outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal

financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☐

If the answer to Question 1 is “Yes,” continue to Question 2. If the answer to Question 1 is “No”, move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

If the answer to Question 2 is “Yes,” move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is “No” FFATA reporting is required. Provide the information required in the “TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR” appearing below to report the “Total Compensation” for the five (5) most highly compensated “Executives”, in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

“Executive” is defined as “officers, managing partners, or other employees in management positions”.

“Total Compensation” is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be 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, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor must be prohibited from 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) 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.

(G) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 must 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 non-Federal award.

(K) See §200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHES (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Palm Coast
PROJECT #:	4337-118-R
PROJECT TITLE:	Generator Project
CONTRACT #:	H0242
MODIFICATION #:	NA

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Brian Matthews Environmental Compliance Manager City of Palm Coast 2 Utility Drive Palm Coast, Florida 32137

Enclosed is your copy of the proposed contract/modification between **City of Palm Coast** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
<input type="checkbox"/>	This form is required to be included with all Reviews, Approvals, and Submittal
<input type="checkbox"/>	Two (2) Copies printed for Approval
<input type="checkbox"/>	Printed Single-sided (<i>If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature</i>)
<input type="checkbox"/>	Reviewed and Approved
<input type="checkbox"/>	Signed and Dated by Official Representative (<i>blue ink</i>)
<input type="checkbox"/>	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
<input type="checkbox"/>	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (<input type="checkbox"/> N/A for Modifications)
<input type="checkbox"/>	Two Signed and dated Originals mailed to FDEM - Tallahassee Florida Division of Emergency Management Mitigation Bureau – HMGP 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100 Attention – Grant Specialist –Veronica S. Ash

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4578 or email me at Renee.singh@em.myflorida.com.

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Stormwater & Engineering	Amount	\$67,895.00
Item Key		Account	54029082-063000-85003
Subject	RESOLUTION 2019-XX APPROVING A WORK ORDER WITH MCKIM & CREED, INC., FOR ENGINEERING DESIGN AND CONSTRUCTION SERVICES FOR THE INSTALLATION OF GENERATORS FOR FIVE PUMPS STATIONS		
Background : City staff requested approval of the Florida Division of Emergency Management cost share agreements for Hazard Mitigation Grant for the purchase and installation of generators for five pump stations throughout the City. The generators will be installed at existing pump stations and placed on concrete pads and connected to electrical panels. Some of the pump stations may need minor modifications to accommodate the new generators. In addition, the grants require specific administrative tasks, for example; payroll verification and reimbursement requests. Under the existing contract, staff negotiated a scope and fee not-to-exceed \$67,895 with McKim and Creed for design and construction engineering services for the Hazard Mitigation project. City staff has determined that the cost for the design services are reasonable and fair and are consistent with these types of services for a project of this size and scope. Funds for this project have been budgeted for in the Utility 5-Year Capital Improvement Plan and is budgeted for Fiscal Year 2019-2020.			
SOURCE OF FUNDS WORKSHEET FY 2019			
Improve-lift station replacement 54029082-063000-85003			\$ 3,850,000.00
Total Expended/Encumbered to Date.....			\$
Pending Work Orders/Contracts.....			\$
Current (WO/Contract).....			\$ 67,895.00
Balance			\$ 3,782,105.00
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING A WORK ORDER WITH MCKIM & CREED, INC. FOR DESIGN AND CONSTRUCTION ENGINEERING SERVICES FOR THE INSTALLATION OF GENERATORS FOR FIVE PUMP STATIONS			

RESOLUTION 2019-_____
HAZARDOUS MITIGATION GRANT PROGRAM
PUMP STATION GENERATORS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A WORK ORDER TO MCKIM & CREED, INC., FOR DESIGN AND CONSTRUCTION ENGINEERING SERVICES FOR THE HAZARDOUS MITIGATION GRANT PROGRAM PUMP STATION GENERATORS PROJECT; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID WORK ORDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, McKim & Creed, Inc., is engaged in a continuing services agreement to provide engineering services to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to issue a work order under said agreement to McKim & Creed, Inc., for engineering services relating to the design and construction of the Hazardous Mitigation Grant Program Pump Station Generators project.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF WORK ORDER. The City Council of the City of Palm Coast hereby approves the terms and conditions of a work order to McKim & Creed, Inc., for engineering services relating to the design and construction of the Hazardous Mitigation Grant Program Pump Station Generators project, as attached hereto and incorporated herein by reference herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the work order as depicted in Exhibit "A."

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A"-Work Order with McKim & Creed, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

**CITY OF PALM COAST
BACKUP POWER TO THIRTY (30) PUMP STATIONS
FEMA GRANT NO.: FEMA-DR-4283-FL**

**PROPOSAL FOR DESIGN, SURVEY, PERMITTING,
BIDDING, AND CONSTRUCTION SERVICES**

I. INTRODUCTION

The City of Palm Coast (CITY) had experienced a much wetter than normal year in 2017, and combined with power outages caused by Hurricane Irma, caused some of the CITY's lift/pump stations to exceed their pumping capacity and overflow. In order to prevent similar occurrences from taking place in the future, the CITY has applied for, and has been approved, to receive Federal and State monies in order to fund construction contracts to furnish and install thirty (30) permanent standby generators to be located at pump station sites throughout the CITY.

The work will be separated into six (6) separate contracts, with each contract incorporating five (5) standby generators at five (5) lift/pump station sites. In addition to the generators, an automatic transfer switch, aluminum enclosure, conduit and other electrical components will be incorporated at a total of thirty (30) lift/pump station sites.

With the project receiving funding from the Florida Division of Emergency Management and the Federal Emergency Management Agency (FEMA), this proposal will include a SUB-CONSULTANT'S effort to oversee the funding and compliance services necessary to assure that the provisions and requirements of the Hazard Mitigation Grant Program (HMGP) are met.

II. OBJECTIVE

The objective of this proposal is to provide engineering and oversight services to the City of Palm Coast for the for the design, survey, permitting, bidding and construction services for the incorporation of thirty (30) permanent standby generators to be installed at thirty (30) lift/pump station sites throughout the CITY.

McKim & Creed, Inc. (CONSULTANT) shall coordinate all work activities through the following CITY staff:

Richard Adams – Utility Director
Steve Flanagan – Community Development Director
Brian Matthews – Environmental Compliance Manager
Mary Kronenberg – Project Manager

III. SCOPE OF WORK

This Scope of Services has been developed to address the anticipated project requirements. Task items not specifically identified in this Scope of Services are not included. If, during the course of the Work Assignment, it is determined that additional work or assistance is necessary to complete this project, those items can be added as additional services at that time.

In preparing this Scope of Services and engineering services fee, the CONSULTANT makes the following assumptions:

- The CITY will provide available record drawings of the thirty (30) lift/pump stations.
- The CITY will provide all required documentation for submittal to the appropriate CITY committees and boards.
- Consistent with the professional standards of care and unless specifically provided herein, the CONSULTANT shall be entitled to rely upon the accuracy of data and information provided by the CITY or others without independent review or evaluation.

The CONSULTANT shall provide the SCOPE OF SERVICES as outlined below:

Task 1: Project Kickoff and Data Collection

- CONSULTANT shall develop project documents that will include project setup, project schedule, hard and electronic filing systems, and conduct internal kickoff meeting with the design team. Management of the Project will also be included with this task.
- CONSULTANT shall conduct a Project Kickoff Meeting with the CITY staff to discuss the overall project scope, approach and schedule. CONSULTANT shall prepare the meeting agenda and a detailed schedule for the kickoff meeting. Key team members will be identified and procedures for communication and data collection will be established. Meeting minutes will be prepared by CONSULTANT and distributed to meeting attendees.
- CONSULTANT shall work with the CITY to coordinate gathering any existing drawings or other data that is pertinent to the design of the Project.

Task 2: Design Services

- CONSULTANT shall perform a specific purpose topographic survey of the thirty (30) lift/pump station sites.
- CONSULTANT shall provide electrical design services for the incorporation of permanent standby generators at thirty (30) pump station sites located throughout the CITY.
- CONSULTANT shall provide civil/site design services required at each of the thirty (30) lift/pump station sites. Design services shall include siting of the generator; design of the generator slab; detail sheets and standard sheets.
- CONSULTANT shall prepare six (6) Project Manuals to incorporate the latest front end documents and technical sections. Each manual will contain information that is specific to the five (5) lift/pump stations included within each manual.
- CONSULTANT shall prepare 60%, 90% and 100% design drawings and will review the 60% and 90% Drawings with CITY staff. Comments and input from staff will be incorporated into the Contract Documents.
- CONSULTANT shall prepare an Engineer's Opinion of Probable Construction Cost for the project. This information shall be presented to CITY staff for review at the 60%, 90%, and 100% design review stages. The cost will be pertinent to each contract containing the five (5) lift/pump stations.
- CONSULTANT shall provide a Quality Control and Quality Assurance (QA/QC) review of the Project. The review shall be conducted by a senior level engineer not directly involved with the Project in accordance with the CONSULTANT QA/QC procedures prior to each submittal.
- CONSULTANT shall provide electronic files of the Drawings and Project Manual to the CITY that is suitable for placement on the CITY'S website for bidders and suppliers.

Task 3: Prepare Permit Applications

- CONSULTANT shall prepare and submit pump station site plans to the CITY for comments from the Technical Review Committee.
- CONSULTANT shall provide drawings to assist the Contractor with obtaining the CITY Building Permit.

- All permit fees will be paid by the CITY.
- Task Nos. 1, 2 and 3 must be completed and submitted to the Utility Director within 90 days of the issuance of Notice to Proceed or Purchase Order.

Task 4: Negotiation and Bidding Services

- CONSULTANT shall prepare and distribute the six (6) contract documents for the incorporation of permanent standby power at the thirty (30) lift/pump station sites and assist the CITY'S staff in bidding the construction of the project.
- CONSULTANT shall schedule six (6) pre-bid meetings to discuss the Project with prospective Contractors and answer questions they may have about the Project. CONSULTANT shall prepare and forward to the City any necessary clarifications or addenda during the bidding phase.
- CONSULTANT shall attend six (6) bid openings, review and evaluate the bids for this Project, prepare six (6) Bid Tabulations, and provide a Letter of Recommendation of Award for each of the six (6) contracts.

Task 5: Construction Services for FEMA Grant

General

Services described herein relate to the capital funding and compliance services during the design and construction phases of the backup power for pump stations project funded through the Hazard Mitigation Grant Program (HMGP) CFDA Number 97.039 (Project). These services will be provided to assist with compliance with the HMGP requirements.

The SUB-CONSULTANT will represent the CONSULTANT and the CITY and coordinate with the Florida Division of Emergency Management (DEM), CITY staff, the CONSULTANT, and construction companies in the funding administration process. Draft transmittal letters and final document submittals to the DEM to facilitate the funding will be prepared by the SUB-CONSULTANT, as needed. The CITY, the CONSULTANT, and the construction companies will provide documents and information as necessary to complete these tasks. The SUB-CONSULTANT will advise and draft responses to questions and/or comments relative to the funding if needed. The SUB-CONSULTANT will be available to provide advice and consultation relative to the funding process throughout the term of this agreement.

SUB-CONSULTANT'S services include:

A. Advisory Services

For services not included in specific Tasks, the SUB-CONSULTANT will be available on an as needed basis to assist the CITY and the CONSULTANT, attend meetings as necessary, respond to questions, and provide guidance and advice to the CITY, the CITY'S staff, and the CONSULTANT relative to the funding process requirements. The SUB-CONSULTANT will represent the CITY before state and federal agencies and others in settling any issues relative to the funding and compliance process that may arise during the Project period covered in these Tasks. The SUB-CONSULTANT will be available to provide guidance and assistance for the CITY to meet with state and federal elected officials, state and federal agencies, and others if necessary.

B. Construction Bidding Document Preparation Services

The SUB-CONSULTANT will advise and assist the CONSULTANT in the preparation of contract bidding documents with conditions and provisions as may be required by the DEM and FEMA for bidding purposes. The SUB-CONSULTANT will assist the CONSULTANT in obtaining appropriate compliance requirement documents for inclusion in the bidding documents. The SUB-CONSULTANT will advise the CITY and the CONSULTANT of other requirements as may be needed to obtain approval of the DEM to prepare the project for bidding.

C. Pre-Construction and Construction Progress Meetings

The SUB-CONSULTANT will prepare for and attend a Pre-Construction Meeting and Construction Progress Meetings as needed and requested by the CONSULTANT or the CITY to provide guidance relative to the DEM program compliance requirements that apply during construction. If a written response to questions is needed, the SUB-CONSULTANT will assist the CONSULTANT and the CITY in the preparation of the response.

D. Construction Compliance and Disbursement Requests

The SUB-CONSULTANT will assist in monitoring the Minority and Women's Business Enterprises participation and provide reports as may be required by the DEM. The CONSULTANT will collect the monthly M/WBE utilization reports from the contractors and subcontractors when payment applications are received from the contractors and submit to the SUB-CONSULTANT. The SUB-CONSULTANT will advise the CONSULTANT and the CITY in the maintenance of files of compliance documentation as required for inspection by the DEM, auditors, and others. The SUB-CONSULTANT will notify the CONSULTANT

and the CITY of any exceptions noted in the review of the submitted documents and assist the CONSULTANT, CITY, and the contractor in maintaining compliance with the DEM requirements. The SUB-CONSULTANT will assemble the contractor's monthly pay estimates and invoices for other grant eligible costs along with supporting documentation as required by the DEM and prepare draft disbursement request packages. The CONSULTANT or the CITY will verify the contractor's work progress and accuracy of the contractor's monthly pay estimates. The SUB-CONSULTANT will prepare the disbursement requests and submit to the CITY for review, approval, signing, and submittal to the DEM. The SUB-CONSULTANT will represent the CONSULTANT and the CITY and coordinate with the DEM to settle any issues relating to the M/WBE requirements, or other compliance process requirements.

Task 6: Post Design Construction Services

- CONSULTANT shall advise and consult with the CITY for post design and construction activities. CONSULTANT will act as the CITY's representative as provided in the General Conditions of the Contract Documents concerning construction administrative matters as hereinafter described.
- For the purposes of this Scope of Services, it is assumed construction phase services will occur over a period of 300 (three hundred) days to Final Completion, or 270 (two hundred seventy) days from the date of the Notice to Proceed to Substantial Completion, in accordance with the proposed construction contract between the CITY and the Contractor.
- CONSULTANT shall attend and represent the CITY at preconstruction, progress, and project closeout meetings with the Contractor, surveyors, layout personnel and construction quality control testing personnel. CONSULTANT will also review and monitor Contractor's construction schedule and advise the CITY of any anticipated project delays and/or early completion indicated through such review and through construction progress observation. For scope purposes, progress meetings will be held on a bi-weekly basis.
- CONSULTANT shall check and review shop drawings, catalog data, diagrams, illustrations, schedules, samples, test and inspection results and other data the Contractor is required to submit, but only as to conformance with the overall design concept of the project and compliance with the Plans, Specifications, and other Contract Documents.
- CONSULTANT shall submit four (4) signed and sealed set of plans and one (1) electronic copy of each contract for submittal to the CITY's Technical Review

Committee of the Planning Department. CONSULTANT will not be required to submit utilization plans direct to the City Engineering Department.

- CONSULTANT shall provide three (3) signed and sealed set and one (1) electronic copy of plans of each contract to the Contractor for City Building Permit requirements. Contractor to submit to the City Building Department.
- CONSULTANT shall retain the services of a Geotechnical firm in order to perform compressive tests on concrete cylinders taken for the concrete slab for support of the generator at each lift/pump station site.
- CONSULTANT may, as the CITY's representative, require special inspection or testing of the work (whether or not fabricated, installed or completed). CONSULTANT shall act as interpreter of the terms and conditions of the Contract Documents and judge of the performance hereunder by the CITY and the Contractor and make decisions on all claims of the CITY and the Contractor relating to the execution and progress of the work and all other matters and questions related thereto; however, CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by CONSULTANT in good faith.
- Based on CONSULTANT's on-site observations as an experienced and qualified design professional and review of the Contractor's applications for payment, supporting data, and information received from the CITY, CONSULTANT shall determine the amounts owing to the Contractor and recommend approval in writing of payments to the Contractor in such amounts. Such recommendations shall constitute representations to the CITY, that are expressions of CONSULTANT's opinion, based on such observations and review, that the work has substantially progressed to the point indicated and that, to the best of CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning project upon Substantial Completion and to the results of any subsequent tests called for in the Contract Documents).
- CONSULTANT shall make periodic visits to the work site to observe the progress and report to the CITY as to the amount of work completed, the overall quality of executed work, and observed impediments to the successful contract completion. CONSULTANT shall not be required to make exhaustive or continuous on-site observations as to the quality or quantity of completed work; CONSULTANT shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions incidental thereto. CONSULTANT's efforts will be directed toward providing assurance to the CITY that the completed project will substantially conform to the contract, plans,

and specifications, but CONSULTANT shall not be responsible for the Contractor's failure to perform the construction work in accordance with said documents. Based on on-site observation as an experienced and qualified design professional, CONSULTANT will keep the CITY informed as to the progress of the work, will endeavor to guard the CITY against defects and discrepancies and shall coordinate with the CITY and the Contractor as to disapproving or rejecting work which fails to meet the project plans, specifications or other Contract Documents.

- CONSULTANT shall not provide a record of the Contractor's activities throughout the construction, nor notations on the nature and cost of any extra work or changes ordered during construction. CONSULTANT is not responsible for the performance of the construction contract by the Contractor. In order to maintain a complete record of activities and changes, CONSULTANT shall rely on the CITY to provide information based on inspections conducted by the CITY.
- CONSULTANT shall, in conjunction with other CITY representatives, conduct punch list and final observations of the in-place work to determine if the work is completed substantially in accordance with the plans, specifications and other Contract Documents. These observations shall form the basis for CONSULTANT's review and recommendation for payment on the Contractor's final pay request.
- CONSULTANT shall review Contractor provided record drawings/surveys and other as-built data for installed facilities and bring any apparent discrepancies between the as-built conditions and the design conditions to the attention of the CITY. CONSULTANT shall coordinate with the Contractor regarding provision of the construction record drawings prior to final on-site inspections and punch list preparation. CONSULTANT shall also prepare and furnish to the CITY one (1) set of signed and sealed Record Drawings and one electronic copy (AutoCAD format) of the record drawings showing those changes made during the construction based on the data noted above. CONSULTANT will prepare statements of completion (qualified if necessary) certifying completion of the work, and submit statements in accordance with the Contract Documents, regulatory agencies, and CITY requirements.
- CONSULTANT shall not be responsible for the acts or omissions of the Contractor or any of the Contractor's Sub-Contractors, Agents, Employees, or other persons performing any of the work under the construction contract, or of others.

- CONSULTANT, through its survey sub-consultant, shall establish construction control points on the drawings for the Contractor's use during construction. CONSULTANT is not responsible for laying out the Contractor's work.
- This proposal includes SUB-CONSULTANT services for geotechnical testing (construction quality control) and surveying services. CONSULTANT shall coordinate with all the SUB-CONSULTANTS during construction.
- No other SUB-CONSULTANT services are included.

IV. FEES AND BILLING

The proposed not-to-exceed fee has been calculated utilizing rates as approved in the base contract between CONSULTANT and the City of Palm Coast. Expenses for sub-consultants, printing, travel, telephone and all other related changes have been estimated and included in the above not-to-exceed fee. CONSULTANT shall invoice the CITY based on actual time and expenses and the total amount invoiced to the CITY shall not exceed \$67,895.00. A Fee Matrix showing the estimated hours and the rates is attached for your review.

P:\PROPOSALS ENGINEERING\Proposals 2019 For DB-JX-PC\City Of Palm Coast\192490 - Backup Power To 5 Pump Stations 2019\192490 - Backup Power To 5 Pump Stations 100819.Doc

FEE MATRIX
CITY OF PALM COAST
OCTOBER 2019
BACKUP POWER TO FIVE (5) PUMP STATIONS
FEMA GRANT NO.: FEMA-DR-4337-FL
PROPOSAL FOR DESIGN, SURVEY, PERMITTING, BIDDING AND CONSTRUCTION SERVICES

STAFF CLASSIFICATION		Senior Project Manager		Senior Electrical Engineer		Senior Project Engineer		Project Engineer I - Electrical		Engineer Intern - Electrical		CAD Designer II		Construction Administrator III		Administrative Assistant		Subconsultant Services (Survey, Geotechnical and FEMA Compliance)	Direct Expenses	TOTAL PER TASK	
TASK NO.	DESCRIPTION	RATE:	\$180	RATE:	\$188	RATE:	\$160	RATE:	\$105	RATE:	\$105	RATE:	\$105	RATE:	\$123	RATE:	\$63				
		HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL				
1	PROJECT KICKOFF & DATA COLLECTION																				
1.1	In-House Project Management/Internal Kick-Off Meeting	2	\$360	2	\$376	6	\$960					2	\$210			10	\$630				
1.2	Kickoff Meeting with the City Staff					4	\$640									2	\$126				
1.3	Coordinate Data Collection					2	\$320														
TASK 1 SUBTOTAL			\$360		\$376		\$1,920						\$210				\$756				
2	DESIGN SERVICES																			\$3,622	
2.1	Topographic Survey for Pump Station Sites (ATS Land Surveying)					1	\$160											\$9,285			
2.2	Electrical Design							11	\$1,155	56	\$5,880					2	\$126				
2.3	Civil Design					10	\$1,600					75	\$7,875								
2.4	Prepare Project Manual					8	\$1,280	5	\$525					2	\$246	12	\$756				
2.5	60%, 90% and 100% Review Meetings with City Staff/Update Project					8	\$1,280									4	\$252				
2.6	Prepare an Opinion of Probable Cost at 60%, 90%, and 100% Design					6	\$960	3	\$315							4	\$252				
2.7	Quality Assurance/Quality Control	8	\$1,440	4	\$752																
2.8	Provide Electronic Files to City											2	\$210			2	\$126				
TASK 2 SUBTOTAL			\$1,440		\$752		\$5,280		\$1,995		\$5,880		\$8,085		\$246		\$1,512			\$25,190	
3	PREPARE PERMIT APPLICATIONS																				
3.1	Technical Review Committee Submittals											2	\$210			2	\$126				
TASK 3 SUBTOTAL													\$210				\$126			\$336	
4	NEGOTIATION AND BIDDING																				
4.1	Pre-Bid Meeting					4	\$640									2	\$126				
4.2	Prepare/Distribute Addenda					4	\$640					6	\$630			6	\$378				
4.3	Bid Opening Meeting					2	\$320									2	\$126				
4.4	Prepare Bid Tabulation and Recommendation of Award Letter					2	\$320									4	\$252				
TASK 4 SUBTOTAL							\$1,920						\$630				\$882			\$3,432	
5	CONSTRUCTION SERVICES FOR FEMA GRANT																				
5.1	Advisory Services																	\$1,500			
5.2	Construction Bidding Document Preparation Services					2	\$320											\$600			
5.3	Pre-Construction and Construction Progress Meetings																	\$1,500			
5.4	Construction Compliance and Disbursement Requests																	\$5,400			
TASK 5 SUBTOTAL							\$320														
6	POST-DESIGN CONSTRUCTION SERVICES																			\$320	
6.1	Attend Pre-Construction and Project Meetings					12	\$1,920									12	\$756				
6.2	Review Shop Drawings, RFIs and Other Submittals			2	\$376	2	\$320	12	\$1,260					4	\$492	2	\$126				
6.3	Provide Four (4) Sets of Signed & Scaled Drawings for City TRC Review											2	\$210			2	\$126				
6.4	Assist City with Change Order Preparation					2	\$320							2	\$246	2	\$126				
6.5	Review Pay Request Applications					2	\$320														
6.6	Perform Site Visits					36	\$5,760														
6.7	Geotechnical Firm for Compressive Strength Tests/Density Tests					2	\$320											\$2,200	\$200		
6.8	Attend Substantial and Final Observations of Work					6	\$960									2	\$126		\$100		
6.9	Review As-Built Drawings					1	\$160														
6.10	Provide Project Certification					1	\$160														
TASK 6 SUBTOTAL					\$376		\$10,240		\$1,260				\$210		\$738	2	\$126			\$14,210	
Subtotal		10	\$1,800	8	\$1,504	123	\$19,680	31	\$3,255	56	\$5,880	89	\$9,345	8	\$984	74	\$4,662	\$20,485	\$300		
																			TOTAL McKIM & CREED LABOR TASK NOS. 1 - 6		\$47,110
																			SUBCONSULTANT SERVICES		\$20,485
																			DIRECT EXPENSES		\$300
																			TOTAL PROPOSAL		\$67,895

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	UTILITY	Account#	54029083
Item Key			063000 82008
Subject	RESOLUTION 2019-XX APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF PALM COAST AND FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF 526 MANHOLE DISHES FOR THE WASTEWATER COLLECTION SYSTEM		
Background:	<p>In August 2018, City staff submitted a grant application to Florida Division of Emergency Management (FDEM) for 526 manhole dishes associated with the wastewater collection system through the Hazard Mitigation Grant Program (HMGP) as a result of Hurricane Irma Disaster Declaration (FEMA-4337-DR-FL). Prior to application, the referenced project was integrated into the Flagler County Local Mitigation Strategy Plan (LMS) and subsequently prioritized with other community stakeholder projects in December 2017. The LMS working group approved 14 prioritized projects across the County for funding under Hurricane Irma. The prioritizing of the projects and ensuring compliance with the LMS is a prerequisite of pursuing HMGP grant funding.</p> <p>The City of Palm Coast received notification on September 17, 2019 that the application has been approved for cost share funding by the Federal Emergency Management Agency (FEMA). The manhole dishes have been determined to be needed in flood prone areas during heavy rainfall events and will act as a barrier from intrusion of rainwater into the wastewater collection system.</p> <p>The City of Palm Coast will receive a Federally-funded subaward and Grant Agreement for 526 manhole dishes. The city received the attached agreement, with an award date of May 3, 2019 and contract expiration date of May 31, 2021. FDEM serves as a pass-through entity providing grant funds to the sub-recipient (City of Palm Coast), and will be managing contract compliance on behalf of FEMA.</p> <p>The total projected project cost is \$53,270.00 which has been budgeted in the Utility Capital Improvement Projects Fund. The FEMA agreement states they will reimburse the City for 75% of the final project cost. The City will be responsible for 25% of the final project cost.</p>		
Recommended Action :	ADOPT RESOLUTION 2019-XX APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF PALM COAST AND FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF 526 MANHOLE DISHES FOR THE WASTEWATER COLLECTION SYSTEM		

RESOLUTION 2019 - ____
HAZARD MITIGATION GRANT PROGRAM
MANHOLE DISHES
CONTRACT AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT, A PASS-THROUGH ENTITY TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR MANHOLE DISHES TO SERVICE THE WASTEWATER COLLECTION SYSTEM; PROVIDING AN EFFECTIVE DATE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Flagler County and the State of Florida were directly impacted by Hurricane Irma which resulted in a Presidential Disaster Declaration and availability of Hazard Mitigation Grant Program (HMGP) funding; and

WHEREAS, to qualify for HMGP funding, a project shall conform to the funding priorities for the disaster, as established in the appropriate Local Mitigation Strategy (LMS) Workgroup; and.

WHEREAS, the City of Palm Coast has actively participated as a LMS Workgroup stakeholder and has ensured that mitigation projects associated with weather and man-made hazards are incorporated into the LMS Plan; and

WHEREAS, the City of Palm Coast and other community stakeholders ranked LMS project priorities in December 2017 which included manhole dishes for the wastewater collection system, determined to be in flood prone areas during heavy rainfall events; and

WHEREAS, the grant agreement of five hundred twenty-six manhole dishes was awarded May 2019, for a federal share obligation of \$39,952.50 (75% of the manhole dish cost).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the FEMA Grant Agreement Number H0212 for Project Number 4337-116-R for five hundred twenty-six (526) manhole dishes, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful, or unconstitutional, said determination shall not be held to invalidate or impair the validity, force, or effect of any other section, sentence phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th Day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA SMITH, CITY CLERK

Attachment: Exhibit "A" – Federally-Funded Subaward and Grant Agreement

Approved as to form and legality

William E. Reischmann, Jr., Esq.

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Palm Coast
PROJECT #:	4337-116-R
PROJECT TITLE:	Manhole Dishes, Drainage Project
CONTRACT #:	H0212
MODIFICATION #:	NA

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Mr. Brian Matthews, Environmental Compliance Manager City of Palm Coast 2 Utility Drive Palm Coast, Florida 32137

Enclosed is your copy of the proposed contract/modification between **the City of Palm Coast** and the Florida Division of Emergency Management (FDEM).

COMPLETE	
<input type="checkbox"/>	This form is required to be included with all Reviews, Approvals, and Submittal
<input type="checkbox"/>	Two (2) Copies printed for Approval
<input type="checkbox"/>	Printed Single-sided (<i>If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature</i>)
<input type="checkbox"/>	Reviewed and Approved
<input type="checkbox"/>	Signed and Dated by Official Representative (<i>blue ink</i>)
<input type="checkbox"/>	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
<input type="checkbox"/>	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (<input type="checkbox"/> N/A for Modifications)
<input type="checkbox"/>	Two Signed and dated Originals mailed to FDEM - Tallahassee Florida Division of Emergency Management Mitigation Bureau – HMGP 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100 Attention – Grant Specialist –Veronica S. Ash, FCCM, Office 330-B

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4578 or email me at Renee.singh@em.myflorida.com.

Agreement Number: H0212

Project Number: 4337-116-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.74, “pass-through entity” means “a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.93, “Sub-Recipient” means “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.38, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.92, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	CITY OF PALM COAST
Sub-Recipient's unique entity identifier:	59-3614294
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	May 3, 2019
Subaward Period of Performance Start and End Date:	Upon Execution thru May 31, 2021
Amount of Federal Funds Obligated by this Agreement:	\$39,952.50
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	\$39,952.50
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	\$39,952.50
Federal award project description (see FFATA):	Drainage Project
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Renee.singh@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and the City of Palm Coast, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Renee Singh, Project Manager
Florida Division of Emergency Management
Bureau of Mitigation
2702 Directors Row
Orlando, Florida 32809-5631
Telephone: (850) 815-4578
Email: Renee.singh@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Brian Matthews, Environmental Compliance
Manager
City of Palm Coast
2 Utility Drive
Palm Coast, Florida 32137
Telephone: (386) 986-2353
Email: bmatthews@palmcoastgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK.

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT.

This Agreement shall begin upon execution by both parties and shall end on **May 31, 2021**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$39,952.50**.
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,

iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

- a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.
- b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.
- c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(11)AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”

c. When conducting an audit of the Sub-Recipient’s performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. §200.50, GAGAS, “also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.”

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING.

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement; as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15)DEFAULT.

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES.

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17)TERMINATION.

a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”).

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall “maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division’s review and comments shall not constitute an approval of the solicitation. Regardless of the Division’s review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. “[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage” otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 (“Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms”).

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions

(20) PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22)MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list 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 a public entity, and may not transact business with any public entity in

excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

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

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

I. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, 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 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.

ii. 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 Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. 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. Code. 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.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION.

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26)EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.

iii. 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.

iv. 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.

v. 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.

vi. 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.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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.

b. The Sub-Recipient 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.

c. The Sub-Recipient 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.

d. The Sub-Recipient 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 Sub-Recipient 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 Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

- 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. pt. 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 the 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.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its 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).
- ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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.

(32)CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33)ASSURANCES.

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: CITY OF PALM COAST

By: _____

Name and Title: _____

Date: _____

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Jared Moskowitz, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: **\$39,952.50**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A

Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve the drainage system in City of Palm Coast, Flagler County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-116-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, City of Palm Coast, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of floodwater, within the City of Palm Coast, Florida.

The scope of work proposes to install 526 stainless-steel manhole dishes with neoprene gaskets in order to protect against the inflow of floodwater into the sewer system and preclude overflows and discharges of wastewater into the environment.

The project shall provide protection against a 500-year event. Activities shall be completed in strict compliance with Federal, State and Local Rules and regulations.

Project Locations:

ID#	Name/Station	Location	Coordinates
1)	Section 11	NE NW SE SW	(29.562732,-81.230569) (29.561230,-81.238773) (29.555844,-81.227735) (29.555959,-81.237098)
2)	Section 20	NE NW SE SW	(29.548200,-81.236586) (29.550439,-81.245423) (29.538138,-81.239931) (29.539666,-81.245734)
3)	Section 21	NE NW SE SW	(29.550548,-81.245717) (29.552458,-81.256003) (29.542149,-81.245253) (29.546060,-81.255764)
4)	Section 27	NE NW SE SW	(29.525580,-81.257090) (29.525358,-81.262425) (29.523114,-81.257060) (29.522894,-81.262258)
5)	Section 32	NE NW SE SW	(29.517453,-81.237294) (29.520204,-81.243534) (29.510448,-81.240466) (29.512238,-81.245620)

6)	Section 57	NE NW SE SW W	(29.470413,-81.182527) (29.471945,-81.190588) (29.457059,-81.180865) (29.456871,-81.184170) (29.461847,-81.179465)
7)	Section 81	NE NW SE SW	(29.553384,-81.198722) (29.553248,-81.206072) (29.544652,-81.195668) (29.543240,-81.209767)
8)	Linear Park Area	N SE SW	(29.570825,-81.192872) (29.565494,-81.192364) (29.566616,-81.195049)

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the installation to improve the drainage and provide flood protection.

The project shall be implemented in accordance with sealed engineering designs and construction plans previously presented to the Division by the Sub-Recipient and subsequently approved by the

Division and FEMA. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The Sub-Recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by the professional of record. The Sub-Recipient shall complete the project in accordance with all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county official, or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) A copy of designs, specifications and/or drawings and maps elaborated to complete the scope.
 - b) All Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
 - c) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of improving drainage of floodwater, within the City of Palm Coast, Florida by installing 526 stainless-steel manhole dishes with neoprene gaskets to protect against the inflow of floodwater into the sewer system and preclude overflows and discharges of wastewater into the environment.

The completed project shall provide protection against a 500-year storm event.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall submit a final copy of any designs, maps, specifications and/or drawings elaborated to complete the scope.
- 3) The Sub-Recipient shall submit all Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
- 4) All installations shall be done in strict compliance with the Florida Building Code or any local codes and ordinances. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 5) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and

approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

- 6) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.

D) Environmental:

- 1) Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project work is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies shall be redone.
- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) re-evaluation before starting project work.
- 3) If any ground disturbance activities occur during construction, the Sub-Recipient shall monitor ground disturbance during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.
- 4) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for closeout.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of the new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 7) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.

- 8) If the Sub-Recipient is not the current title holder of the affected properties, the Sub-Recipient shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.

This is FEMA project number **4337-116-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on May 03, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **May 31, 2021**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

State and Local Contracting:	3 Months
Construction Plan/Technical Specifications:	3 Months
Bidding:	3 Months
Construction:	12 Months
State and Local Inspections:	2 Months
Closeout Compliance:	1 Month
Total Period of Performance:	24 Months

BUDGET**Line Item Budget***

	Project Cost	Federal Share	Non-Federal Share
Materials:	\$49,970.00	\$37,477.50	\$12,492.50
Labor:	\$3,300.00	\$2,475.00	\$825.00
Fees:	\$0.00	\$0.00	\$0.00

Initial Agreement Amount:	\$53,270.00	\$39,952.50	\$13,317.50
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$53,270.00	\$39,952.50	\$13,317.50

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

***** This project has an estimated \$0.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$0.00

Funding Summary

Federal Share:	\$39,952.50	(75%)
Non-Federal Share:	\$13,317.50	(25%)
Total Project Cost:	\$53,270.00	(100%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the “**Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)**” which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

**REQUEST FOR ADVANCE OR REIMBURSEMENT OF
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: TOWN OF PALM COAST

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Drainage Project PROJECT #: 4337-116-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0212

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount ____%	Obligated Non- Federal ____%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	\$ _____
ADMINISTRATIVE COST	\$ _____
APPROVED FOR PAYMENT	\$ _____
GOVERNOR'S AUTHORIZED REPRESENTATIVE	
DATE	

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MTIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: CITY OF PALM COAST PAYMENT #: _____
 PROJECT TYPE: Drainage Project PROJECT #: 4337-116-R
 PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0212

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
<i>This payment represents % completion of the project.</i>					TOTAL

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: CITY OF PALM COAST

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.</p>
--

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: CITY OF PALM COAST PROJECT #: 4337-116-R
PROJECT TYPE: Drainage Project CONTRACT #: H0212
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: \$ _____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20 \$ _____ Oct-Dec 20 \$ _____ Jan-Mar 20 \$ _____ Apr-Jun 20 \$ _____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under **Issues** below*)

Percentage of Work Completed (*may be confirmed by state inspectors*): _____ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments**/Elaboration:

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form: _____

Phone: _____

~ To be completed by Division staff ~

Date Reviewed: _____ Reviewer: _____

Actions: _____

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

CITY OF PALM COAST
Sub-Recipient's Name

H0212
DEM Contract Number

4337-116-R
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-116-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$39,952.50

OBLIGATION/ACTION DATE: May 3, 2019

SUBAWARD DATE (if applicable): _____

DUNS#: 174541107

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of floodwater, within the City of Palm Coast, Florida.

The scope of work proposes to install 526 stainless-steel manhole dishes with neoprene gaskets in order to protect against the inflow of floodwater into the sewer system and preclude overflows and discharges of wastewater into the environment.

The project shall provide protection against a 500-year event. Activities shall be completed in strict compliance with Federal, State and Local Rules and regulations.

Project Locations:

ID#	Name/Station	Location	Coordinates
1)	Section 11	NE NW SE SW	(29.562732,-81.230569) (29.561230,-81.238773) (29.555844,-81.227735) (29.555959,-81.237098)
2)	Section 20	NE NW SE SW	(29.548200,-81.236586) (29.550439,-81.245423) (29.538138,-81.239931) (29.539666,-81.245734)
3)	Section 21	NE NW SE SW	(29.550548,-81.245717) (29.552458,-81.256003) (29.542149,-81.245253) (29.546060,-81.255764)
4)	Section 27	NE NW SE SW	(29.525580,-81.257090) (29.525358,-81.262425) (29.523114,-81.257060) (29.522894,-81.262258)
5)	Section 32	NE NW	(29.517453,-81.237294) (29.520204,-81.243534)

		SE SW	(29.510448,-81.240466) (29.512238,-81.245620)	
6)	Section 57	NE NW SE SW W	(29.470413,-81.182527) (29.471945,-81.190588) (29.457059,-81.180865) (29.456871,-81.184170) (29.461847,-81.179465)	
7)	Section 81	NE NW SE SW	(29.553384,-81.198722) (29.553248,-81.206072) (29.544652,-81.195668) (29.543240,-81.209767)	
8)	Linear Park Area	N SE SW	(29.570825,-81.192872) (29.565494,-81.192364) (29.566616,-81.195049)	

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☐

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should

be accessible at <http://www.sec.gov/answers/execomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is “No” FFATA reporting is required. Provide the information required in the “TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR” appearing below to report the “Total Compensation” for the five (5) most highly compensated “Executives”, in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

“Executive” is defined as “officers, managing partners, or other employees in management positions”.

“Total Compensation” is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be 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, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor must be prohibited from 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) 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.

(G) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 must 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 non-Federal award.

(K) See §200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHES (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	UTILITY	Amount	As Needed
Item Key		Account	54029083 063000 85005
Subject	RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH G.E.M. STONE CONTRACTORS INC. AND S.E. CLINE CONSTRUCTION, INC. FOR EMERGENCY INSTALLATION OF REPLACEMENT PEP TANKS		
Background : The City of Palm Coast Utility Department requires the services of contractors to assist utility staff with the emergency installation of replacement PEP tanks following storm events on an as needed basis. The installation services provided would be based on bid price submittals for the following three emergency line items: (1) new PEP tanks installations, (2) PEP tank replacement installation, and (3) dewatering, when required. Bids were duly advertised and solicited in accordance with the City’s Purchasing Policy. Staff recommends City Council approve master service agreements with G.E.M. Stone Contractors Inc. and S.E. Cline Construction, Inc. based on the City of Palm Coast bid ITB-UT-19-89. The notice of intent to award and project bid overview are attached to this agenda item. City staff will purchase services on an as-needed basis using budgeted utility funds appropriated by City Council.			
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH G.E.M. STONE CONTRACTORS INC. AND S.E. CLINE CONSTRUCTION, INC. FOR EMERGENCY INSTALLATION OF REPLACEMENT PEP TANKS			

RESOLUTION 2019-____
EMERGENCY INSTALLATION
REPLACEMENT PEP TANKS
G.E.M. STONE CONTRACTORS INC. AND S.E. CLINE CONSTRUCTION, INC.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING MASTER SERVICE AGREEMENTS WITH G.E.M. STONE CONTRACTORS INC. AND S.E. CLINE CONSTRUCTION, INC. FOR EMERGENCY INSTALLATION OF REPLACEMENT PEP TANKS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, G.E.M. Stone Contractors Inc. and S.E. Cline Construction, Inc. have expressed a desire to provide emergency installation of replacement PEP Tanks to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires for G.E.M. Stone Contractors Inc. and S.E. Cline Construction, Inc. to provide for the emergency installation of replacement PEP tanks to the City of Palm Coast.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of the master services agreements with G.E.M. Stone Contractors Inc. and S.E. Cline Construction, Inc. for the purchase of emergency installation of replacement PEP Tanks, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachments:

Exhibit "A" – Master Price Agreement- G.E.M. Stone Contractors Inc. and S.E. Cline Construction, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: ITB-UT-19-89 - **EMERGENCY** Installation of Replacement PEP Tanks

Date: 10/1/2019

Appeal Deadline: Appeals must be filed by 5:00 PM on 10/4/2019

Firm	Bid
G.E.M. Stone Contractors, Inc.	\$2,000.00 New
Bunnell, FL	\$2,900.00 Replacement \$350.00 Dewatering
S.E. Cline Construction, Inc.	\$3,575.00 New
Palm Coast, FL	\$4,030.00 Replacement \$975.00 Dewatering

The intent of the City of Palm Coast is to award ITB-UT-19-89 to both Firms listed above.

Cc: Contract Coordinator, Project Manager, ASED Director, Department Director, Finance Director

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaigout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



please recycle

palmcoastgov.com



ITB-UT-19-89 - EMERGENCY Installation of Replacement PEP Tanks

Project Overview

Project Details	
Reference ID	ITB-UT-19-89
Project Name	EMERGENCY Installation of Replacement PEP Tanks
Project Owner	Jesse Scott
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	This Invitation to Bid is issued for the purpose of establishing contracts with a vendor(s) capable of providing EMERGENCY services on an "as needed basis", for the installation of replacement PEP tanks.
Open Date	Sep 04, 2019 8:00 AM EDT
Intent to Bid Due	Sep 25, 2019 2:00 PM EDT
Close Date	Sep 26, 2019 2:00 PM EDT

Awarded Suppliers	Reason	Score
S.E. Cline Construction, Inc.		61.19 pts
G.E.M. Stone Contractors Inc.		100 pts



Seal status

Requested Information	Unsealed on	Unsealed by
Forms 1 - 5	Sep 26, 2019 2:09 PM EDT	Jesse Scott
References	Sep 26, 2019 2:09 PM EDT	Jesse Scott
Price Schedule	Sep 26, 2019 2:09 PM EDT	Jesse Scott

Conflict of Interest

Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: * has direct or indirect financial interest in the award of the contract to any proponent; * is currently employed by, or is a consultant to or under contract to a proponent; * is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, * has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Danny Ashburn	Sep 26, 2019 2:13 PM EDT	No
ralph hand	Sep 26, 2019 3:13 PM EDT	No
Jesse Scott	Sep 26, 2019 2:10 PM EDT	No



Project Criteria

Criteria	Points	Description
Required Forms	Pass/Fail	Submitted and completed as requested
References	Pass/Fail	Technical Review to include doing the reference checks
Price Schedule	Pass/Fail	Technical Review to determine if prices seem reasonable
Price Schedule	100 pts	Price entry
Total	100 pts	



Scoring Summary

Active Submissions

	Total	Required Forms	References	Price Schedule	Price Schedule
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	Pass/Fail	/ 100 pts
G.E.M. Stone Contractors Inc.	100 pts	Pass	Pass	Pass	100 pts (\$5,250.00)
S.E. Cline Construction, Inc.	61.19 pts	Pass	Pass	Pass	61.19 pts (\$8,580.00)

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	UTILITY	Amount	
Item Key		Account	54029082 063000 82001
Subject	RESOLUTION 2019-XX APPROVING A MASTER PRICE AGREEMENT WITH ALPHA GENERAL SERVICES, INC. FOR EMERGENCY REPLACEMENT PEP TANKS		
Background : The City of Palm Coast Utility Department owns and operates a Pretreatment Effluent Pumping (PEP) System and requested firm pricing for Emergency Replacement Pep tanks on an as needed basis. Alpha General Services, Inc. was the apparent low bid at \$2,646.00 per tank. This price agreement contract will be for three years with the option for two one-year renewals. Bids were duly advertised and solicited in accordance with the City's Purchasing Policy. The notice of intent to award and project bid overview are attached to this agenda item. Staff recommends City Council approve master price agreement with Alpha General Services, Inc. based on the City of Palm Coast bid ITB-UT-19-90. These PEP tanks will be purchased on an as needed basis. Funds are appropriated in the Utility Capital for Renewals and Replacements (R&R).			
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING A MASTER PRICE AGREEMENT WITH ALPHA GENERAL SERVICES, INC. FOR EMERGENCY REPLACEMENT PEP TANKS			

RESOLUTION 2019-____
EMERGENCY REPLACEMENT PEP TANKS
ALPHA GENERAL SERVICES, INC.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A MASTER PRICE AGREEMENT WITH ALPHA GENERAL SERVICES, INC., FOR EMERGENCY REPLACEMENT PEP TANKS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Alpha General Services, Inc., desires to provide Emergency Replacement PEP Tanks to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to purchase the Emergency Replacement PEP Tanks from Alpha General Services, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF PRICE AGREEMENT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the master price agreement with Alpha General Services, Inc. for the purchase of Emergency Replacement PEP Tanks, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachments:

Exhibit "A" – Master Price Agreement-Alpha General Services, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: ITB-UT-19-90 - EMERGENCY Replacement PEP Tanks

Date: 10/1/2019

Appeal Deadline: Appeals must be filed by 5:00 PM on 10/4/2019

Firm	Bid
Alpha General Services Inc. Sebring, FL	\$2,646.00

The intent of the City of Palm Coast is to award ITB-UT-19-90 to Alpha General Services Inc.

Cc: Contract Coordinator, Project Manager, ASSED Director, Department Director, Finance Director

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaulgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



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ITB-UT-19-90 - EMERGENCY Replacement PEP Tanks

Project Overview

Project Details	
Reference ID	ITB-UT-19-90
Project Name	EMERGENCY Replacement PEP Tanks
Project Owner	Jesse Scott
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	This Invitation to Bid is issued for the purpose of securing a firm price for the purchase of EMERGENCY INVENTORY REPLACEMENT Pretreatment Effluent Pumping (PEP) Tanks. (Price Agreement). All tanks shall be new and be supplied by a single vendor.
Open Date	Sep 04, 2019 8:00 AM EDT
Intent to Bid Due	Sep 25, 2019 2:00 PM EDT
Close Date	Sep 26, 2019 2:00 PM EDT

Awarded Suppliers	Reason	Score
Alpha General Services		100 pts

Seal status



Requested Information	Unsealed on	Unsealed by
Forms 1 - 5	Sep 26, 2019 2:07 PM EDT	Jesse Scott
References	Sep 26, 2019 2:07 PM EDT	Jesse Scott
Price Schedule	Sep 26, 2019 2:07 PM EDT	Jesse Scott

Conflict of Interest

Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: * has direct or indirect financial interest in the award of the contract to any proponent; * is currently employed by, or is a consultant to or under contract to a proponent; * is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, * has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Danny Ashburn	Sep 30, 2019 6:51 AM EDT	No
ralph hand	Sep 30, 2019 8:18 AM EDT	No
Jesse Scott	Sep 26, 2019 2:08 PM EDT	No



Project Criteria

Criteria	Points	Description
Required Forms	Pass/Fail	completed and submitted as requested
References	Pass/Fail	Technical review and physical reference checks
Price Schedule	Pass/Fail	Technical review to see if prices seem reasonable
Price Schedule	100 pts	Price entry of bid number
Total	100 pts	



Scoring Summary

Active Submissions

	Total	Required Forms	References	Price Schedule	Price Schedule
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	Pass/Fail	/ 100 pts
Alpha General Services	100 pts	Pass	Pass	Pass	100 pts (\$2,646.00)

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Financial Services	Amount
Item Key		Account
Subject	RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH MULTIPLE FIRMS FOR DISASTER FINANCIAL RECOVERY CONSULTANT SERVICES	
Background : In accordance with the City’s Purchasing Policy, City staff advertised and solicited proposals to secure the services of multiple experienced emergency management consulting firms to perform fiscal related disaster recovery and public assistance consulting services in the event of a hurricane or other disaster. The firms selected are capable of tracking disaster related expenses, maintaining appropriate documentation and planning the most effective strategies for financial recovery throughout all the phases of a disaster. They are also capable of assembling a work force within 48 hours and will remain accessible throughout the disaster closeout and audit process. The selected firms have a working knowledge of all applicable federal and state government financial recovery eligibility criteria and any other applicable local, state, federal laws and regulations. The City received five (5) bids which were responsive and responsible. The project bid overview and notice of intent to award are attached. Staff recommends City Council approving Master Service Agreements with the top three (3) ranked firms, GP Strategies Corporation, True North Emergency Management, LLC and Tidal Basin Government Consulting, LLC. City staff will procure these consulting services on an as-needed basis using budgeted funds appropriated by City Council.		
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH GP STRATEGIES CORPORATION, TRUE NORTH EMERGENCY MANAGEMENT, LLC AND TIDAL BASIN GOVERNMENT CONSULTING, LLC FOR DISASTER FINANCIAL RECOVERY CONSULTANT SERVICES		

RESOLUTION 2019 - ____
DISASTER FINANCIAL RECOVERY
CONSULTANT SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF MASTER SERVICE AGREEMENTS WITH GP STRATEGIES CORPORATION, TRUE NORTH EMERGENCY MANAGEMENT, LLC AND TIDAL BASIN GOVERNMENT CONSULTING, LLC FOR DISASTER FINANCIAL RECOVERY CONSULTANT SERVICES, ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, GP Strategies Corporation, True North Emergency Management, LLC and Tidal Basin Government Consulting, LLC desire to provide Disaster Financial Recovery Consultant Services to the City of Palm Coast on an as needed basis; and

WHEREAS, the City Council of the City of Palm Coast desires to have GP Strategies Corporation, True North Emergency Management, LLC and Tidal Basin Government Consulting, LLC, provide for Disaster Financial Recovery Consultant Services, on an as needed basis.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of Master Service Agreements with GP Strategies Corporation, True North Emergency Management, LLC and Tidal Basin Government Consulting, LLC, for Disaster Financial Recovery Consultant Services on an as needed basis, as referenced herein and attached hereto as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the Agreements as depicted in Exhibit “A.”

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November, 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit “A” – Master Service Agreements for temporary labor services

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: Disaster Financial Recovery Consultant - RFP-ADM-19-91

Date: 10/2/2019

Appeal Deadline: Appeals must be Filed by 5:00 PM on 10/4/2019

Firm	Points
GP Strategies Corporation	80
True North Emergency Management	75
Tidal Basin	73.67
ICF Incorporated, L.L.C.	72.67
Kinne Associates	71.67

The intent of the City of Palm Coast is to award RFP-ADM-19-91 to GP Strategies Corporation, True North Emergency Management and Tidal Basin.

Cc: Contract Coordinator, Project Manager, ASED Director, Department Director

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfalgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



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RFP-ADM-19-91 - Disaster Financial Recovery Consultant

Project Overview

Project Details	
Reference ID	RFP-ADM-19-91
Project Name	Disaster Financial Recovery Consultant
Project Owner	Kelly Downey
Project Type	RFP
Department	Procurement
Current Spend	\$0.00
Target Savings	0%
Budget	\$500000.00 - \$531242.00



Project Description	This Request for Proposals is issued for the purpose of requesting proposals from qualified firms for financial recovery and related consulting services to support the oversight, management and administration of post-disaster grant funding.
Open Date	Aug 28, 2019 8:00 AM EDT
Intent to Bid Due	Sep 19, 2019 2:00 PM EDT
Close Date	Sep 19, 2019 2:00 PM EDT

Awarded Suppliers	Reason	Score
GP Strategies Corporation		80 pts
True North Emergency Management		75 pts
Tidal Basin		73.67 pts

Seal status



Requested Information	Unsealed on	Unsealed by
Forms 1 -4	Sep 19, 2019 2:23 PM EDT	Kelly Downey
Price Schedule	Sep 19, 2019 2:23 PM EDT	Kelly Downey
Proposal	Sep 19, 2019 2:23 PM EDT	Kelly Downey
Questionnaire	Sep 19, 2019 2:23 PM EDT	Kelly Downey
Addendum #1	Sep 19, 2019 2:23 PM EDT	Kelly Downey
Addendum #2	Sep 19, 2019 2:23 PM EDT	Kelly Downey

Submissions

Supplier	Date Submitted	Name	Email	Confirmation Code
ICF Incorporated, L.L.C.	Sep 19, 2019 9:29 AM EDT	Hawani Tessema	Hawani.Tessema@icf.com	NTg2NTA=
GP Strategies	Sep 17, 2019 11:22 AM	Joshua Norman	omendoza@gpstrategies.com	NTg0Mzk=



Corporation	EDT			
True North Emergency Management	Sep 19, 2019 1:27 PM EDT	Dade Duke	dduke@truenorthem.com	NTg3MjQ=
Kinne Associates	Sep 18, 2019 11:54 PM EDT	Pio Molina	piomolina@kinneassociates.com	NTg2MzE=
Tidal Basin	Sep 19, 2019 12:49 PM EDT	Rachele Drinkwine	airfp@rphc.com	NTg3MTg=

Project Criteria

Criteria	Points	Description
Forms 1 - 5	Pass/Fail	Forms 1 -5
Price Schedule, Questionnaire, & Proposal	Pass/Fail	References, Questionnaire, Price Schedule, & Proposal
Project Understanding and Proposal	15 pts	Project Understanding and Proposal
Qualifications and Experience	20 pts	Qualifications and Experience



Proposal Cost/Price	15 pts	Proposal Cost/Price
Qualifications of Staff	20 pts	Qualifications of Staff
Technical Approach	20 pts	Technical Approach
Questionnaire	10 pts	Questionnaire
Addenda	Pass/Fail	Addenda
Total	100 pts	

Scoring Summary

Active Submissions

	Total	Forms 1 - 5	Price Schedule, Questionnaire, & Proposal	Project Understanding and Proposal	Qualifications and Experience
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	/ 15 pts	/ 20 pts



	Total	Forms 1 - 5	Price Schedule, Questionnaire, & Proposal	Project Understanding and Proposal	Qualifications and Experience
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	/ 15 pts	/ 20 pts
GP Strategies Corporation	80 pts	Pass	Pass	12 pts	17.67 pts
True North Emergency Management	75 pts	Pass	Pass	13 pts	15.67 pts
Tidal Basin	73.67 pts	Pass	Pass	12 pts	16 pts
ICF Incorporated, L.L.C.	72.67 pts	Pass	Pass	12 pts	15.67 pts
Kinne Associates	71.67 pts	Pass	Pass	12 pts	14.33 pts

	Proposal Cost/Price	Qualifications of Staff	Technical Approach	Questionnaire	Addenda
Supplier	/ 15 pts	/ 20 pts	/ 20 pts	/ 10 pts	Pass/Fail



	Proposal Cost/Price	Qualifications of Staff	Technical Approach	Questionnaire	Addenda
Supplier	/ 15 pts	/ 20 pts	/ 20 pts	/ 10 pts	Pass/Fail
GP Strategies Corporation	13.33 pts	16.33 pts	14.33 pts	6.333 pts	Pass
True North Emergency Management	7 pts	15.67 pts	15 pts	8.667 pts	Pass
Tidal Basin	6.333 pts	16 pts	15.67 pts	7.667 pts	Pass
ICF Incorporated, L.L.C.	8.333 pts	14.33 pts	14.33 pts	8 pts	Pass
Kinne Associates	7.333 pts	15.67 pts	14.33 pts	8 pts	Pass

City of Palm Coast, Florida

Agenda Item

Agenda Date : 10/29/2019

Department Item Key	CITY CLERK	Amount Account
Subject	RESOLUTION 2019-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111	
Background :	<p>On May 1, 2017, City Council approved a contract with Diamond Towers for Telecommunications consulting to improve wireless coverage throughout the City of Palm Coast. The scope of services included developing a wireless master plan and attracting additional carriers to existing towers and developing new towers on potential sites identified in the wireless master plan. In exchange for these services, the City shares increased revenue generated from leases of existing towers and new towers, as outlined in the approved contract.</p> <p>Diamond Towers V LLC has requested to lease City property located at Palm Coast Frieda Zamba Pool F111 for the purpose of constructing a 150-foot high, telecommunications facility (structure). The tower will be a monopole style tower with a full antennae array. This facility will have the capacity to accommodate at least four (4) carriers. This site is part of the approved Wireless Master Plan.</p> <p>The terms of the lease agreement are consistent with the City Council approved contract with Diamond Towers. Some of the highlights are as follows:</p> <ol style="list-style-type: none">1. Initial term will be five years with the option to extend for nine, five-year periods.2. A Site Development Fee of \$12,500 shall be paid to the City upon the commencement of construction of the tower.3. The city will continue to receive 100% of the revenue from the existing tower and 40% of any new recurring revenue generated by the new tower.4. Diamond Towers V LLC will have access to the land to build a 150-foot structure and house ground equipment on the site.	
Recommended Action :	APPROVE RESOLUTION 2019-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111	

RESOLUTION 2019 - ____
OPTION AND GROUND LEASE AGREEMENT
WITH DIAMOND TOWERS V LLC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast contracted with Diamond Towers V, LLC to improve wireless services in the City of Palm Coast; and

WHEREAS, Diamond Towers V, LLC desires to construct a monopole style tower facility at the Palm Coast Frieda Zamba Pool F111 which will have the potential to accommodate at least four carriers; and

WHEREAS, Diamond Towers V, LLC has expressed a desire to lease said property; and

WHEREAS, the City of Palm Coast desires to lease said land to Diamond Towers V, LLC for the construction of a wireless communication facility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AS FOLLOWS:

SECTION 1. APPROVAL OF OPTION AND GROUND LEASE AGREEMENT.

The City Council of the City of Palm Coast hereby approves the terms and conditions of the Option and Ground Lease Agreement with Diamond Towers V, LLC, as attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the Option and Ground Lease Agreement as depicted in Exhibit "A".

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED and approved by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachments: Exhibit A-Option and Ground Lease Agreement Palm Coast Frieda Zamba Pool F111.

Approved as to form and legality

William E. Reischmann, Jr., Esquire
City Attorney

OPTION AND GROUND LEASE AGREEMENT

THIS OPTION AND GROUND LEASE AGREEMENT (“Agreement”) is made this ____ day of _____, 2019 (“Option Date”), between the **CITY OF PALM COAST** (“Optionor” or “Lessor”), at 160 Lake Avenue, Palm Coast, Florida, 32164, and **DIAMOND TOWERS V LLC** (“Optionee” or “Lessee”), a Delaware limited liability company, at 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078. Collectively, the Optionor/Lessor and the Optionee/Lessee may be the “Parties.”

1. **Grant of Option.** For good and valuable consideration and mutual promises, Optionor grants unto Optionee and its assigns, an exclusive and irrevocable option to lease (“Option”) a certain parcel of real property, at the City of Palm Coast Frieda Zamba Pool FL111 (“Site”) as more particularly described in Exhibit “A,” attached and incorporated by reference.

2. **Option Initial Term.** The initial term of the Option is for six (6) months from the Option Date (“Option Initial Term”).

3. **Consideration for Option.** Consideration for the Option Initial Term is One Thousand and 00/100 Dollars (\$1,000.00) plus applicable taxes (“Option Consideration”) to be paid by the Optionee to the Optionor within fourteen (14) days of execution of this Agreement.

4. **Extension of Option.** This Option will be automatically extended by Optionee for each of two (2) additional six (6) month periods (“Option Renewal Term(s)”) unless Optionee notifies Optionor of its intent not to extend the Option. Additional consideration of One Thousand and 00/100 Dollars (\$1,000.00) is due within fourteen (14) days of the commencement of any Option Renewal Term.

5. **Exercise of Option.** Optionee may, at its sole discretion, exercise its option and commence the Ground Lease by delivery of written notice to Optionor at any time during the Option Initial Term or any Option Renewal Term (the “Commencement Date”). The exercise of the Option may not be later than eighteen (18) months following the date of execution of this Agreement. Optionee must notify Optionor in writing, following the requirements of Section 19 of the Ground Lease, of the recordation of the Memorandum of Lease. Upon Optionor’s receipt of Optionee’s notice of exercise of option and recording of the Memorandum, the terms of the Ground Lease (“Lease”), beginning on page 3, will govern the relationship of the Parties.

6. **Optionor’s Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee’s successors and assigns that:

- (a) Optionor has good and marketable title to the Site, free and clear of all liens and encumbrances;
- (b) Optionor has the authority to enter into and be bound by the terms of this Option;
- (c) Optionor is not aware of any pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor which may otherwise affect Optionor’s rights to the Site; and

- (d) The Site is not subject to an option, lease, or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option, and Optionor covenants it will not enter into any contract which will affect the Site until this Option expires or is terminated by Optionee.

These representations and warranties will survive the exercise of the Option and the term of the Lease.

7. **Inspections and Investigations.** Optionor grants to Optionee, its officers, agents, employees, and independent contractors, the right and privilege to enter upon the Site at any reasonable time after the Option Date and after obtaining written approval from Optionor (not to be unreasonably withheld, conditioned, or delayed), to perform site inspections, which may include test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Site. Optionor will provide Optionee with keys and access codes to the Site, if needed, for ingress and egress. The right to access the Site is for the limited purpose of evaluating the feasibility of the Site. Optionee is not an owner or operator of the land and will have no ownership or control of any portion of the Site prior to the execution of this Option. Optionee may not unreasonably interfere with Optionor's use of the Site in conducting these activities. Optionee has the right, at its cost and expense, and with written approval from Optionor (not to be unreasonably withheld, conditioned, or delayed), to have the Site surveyed and to obtain, from a title company of its choice, a title report of commitment for a leasehold and title policy covering the Site. Optionor will remove any survey or title defects that may adversely affect Optionee's leasehold title or its ability to mortgage the leasehold interest. In the event Optionor fails to cure any such defects, Optionee's sole remedy will be to declare this Option to be void and of no further effect, in which case there will be no further liability by Optionee to Optionor. Optionee will indemnify Optionor against all liability, damage, claim, cost and expense resulting from Optionee's exercise of this right of entry. Optionee agrees to restore the Site to substantially the same condition it was in prior to investigating.

8. **Further Acts.** Optionor will cooperate with Optionee in executing or filing of any documents necessary to protect Optionee's rights under this Option, to allow Optionee's use of the Site, and to affect the intent of this Option.

9. **Successors and Assigns.** This Option is binding upon and inures to the benefit of the Parties, their respective heirs, successors, personal representatives and assigns.

10. **Third-Party Beneficiaries.** This Option benefits Optionor and Optionee only. It is not intended for the benefit of any other party.

11. **Assignability.** This Option shall not be assigned by any party except as follows: 1) Optionee may assign this Option or any portion thereof to an affiliate or subsidiary of Optionee in which subsidiary or affiliate of Optionee or Optionee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Optionor, 2) to a party who acquires a majority of the assets of Optionee, or 3) Optionee may grant a security interest in this Option and the Tower Facilities, and may assign this Option and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Optionor shall execute such consent as may reasonably be required by Secured Parties. Optionee shall have the right, without Optionor's consent, to sublease or assign its rights under this Option and to permit any of its sublessees to in

turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Option. Upon assignment of all of its rights pursuant to this Option, and the execution of a written assumption of all of the terms and conditions of the Option by the assignee, Optionee shall be released from any further liability under this Option. Optionee shall have the right, without Optionor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Option and the lease.

12. **Waiver of Claim.** Except as specifically provided in this Agreement, in no event will Optionor or Optionee be liable to the other for, and Optionee and Optionor each hereby waive the right to recover, incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

13. Paragraph No. 33, Miscellaneous, of the Ground Lease, applies to this Option Agreement.

14. **Applicability of the Ground Lease.** The terms of the Ground Lease, beginning on Page 3, will be effective upon Optionee's exercise of this Option.

GROUND LEASE GOVERNING THE RELATIONSHIP OF THE PARTIES UPON THE EXECUTION OF THE OPTION

1. **Leased Premises.** Lessor will lease the property and grant a non-exclusive easement for ingress, egress and utilities for the duration of the Lease.

(a) The leased area is depicted in and attached as Exhibit "A" (the "Leased Premises"),

(b) The Leased Premises will be utilized to construct, support and operate a wireless communications facility. The facility will include a communication tower, antennas, cables, and related structures and improvements. The Tower Facilities (defined below) will be in the location shown in Exhibit "A". Lessee's utilization of the Leased Space must be consistent with Sections 5 and 8 of this Lease; and for only those other purposes which are ancillary and appurtenant to the Tower Facilities, with Lessor's prior-written consent, which will not be unreasonably withheld or delayed.

2. **Initial Term.** The term of this Lease is five (5) years commencing on the Commencement Date, and terminating on the fifth (5th) anniversary of the Commencement Date ("Initial Term"). The Parties agree that a Memorandum of Lease, attached as Exhibit "C," will be executed and recorded in the public records, setting forth the Lease Commencement Date and other matters. The Parties agree that Lessee will record the Memorandum of Lease in the public records. Lessee will notify Lessor in writing of the recordation of the Memorandum and Exercise of Option as noted in Section 19.

3. **Renewal Terms.** This Lease may be renewed for nine (9) additional five (5) year terms, ("Renewal Terms"). Each Renewal Term will be on the same terms and conditions as noted in this Lease. The Lease will automatically renew for each successive Renewal Terms unless Lessee notifies Lessor, one hundred twenty (120) days prior to the expiration of the Initial Term or the Renewal Term then in effect, of its intention not to renew the Lease.

4. **Rent.** Commencing on the first day of the calendar month following the Commencement Date, Lessee will pay to Lessor the rent (“Rent”) provided in the Rent Schedule attached as Exhibit “D,” which will include applicable State, County and local sales, rent or use tax.

(a) Rent must be paid by the tenth (10th) day of each calendar month, and must be remitted to the address shown for Lessor in the Lease, or such other address as Lessor may direct by written notice to Lessee.

(b) If the Commencement Date, or the date of termination (the “Termination Date”), of this Lease is other than the first (1st) day of the month, rent will be prorated. If termination of this Lease occurs for any reason, other than for nonpayment of Rent, all Rent paid before the Termination Date for a period after the Termination Date, will be refunded to Lessee.

(c) Lessee shall pay Lessor a Site Development Fee of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) upon the commencement of construction of the Tower, as defined herein.

5. **Use.**

(a) The Leased Premises may be used by Lessee for the transmission and receipt of wireless communication signals in all lawfully authorized frequencies and other uses as permitted under applicable zoning regulations to accommodate four (4) broadband wireless cellular carriers.

(b) At its sole cost and expense, Lessee may construct and maintain a One Hundred Fifty Foot (150’) monopole telecommunications tower (the “Tower”), structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, personal property and related improvements and facilities (the “Tower Facilities”). Lessee's Tower Facilities will be subject to applicable permitting, laws, regulations and ordinances.

(c) Lessee agrees that the Tower will comply with FAA rules and regulations regarding lighting of the Tower.

(d) Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements during the term of this Lease, provided it complies with all applicable regulations.

(e) Lessor agrees to cooperate with Lessee in obtaining, at Lessee’s expense, licenses and permits required for Lessee’s use of the Leased Premises, and will provide those to Lessor (the “Governmental Approval”).

6. **Lessor’s Representation and Warranties.** Lessor represents and warrants that:

(a) To the best of its knowledge, Lessee’s intended use as noted in Section 5 is not prohibited by covenants, restrictions, reciprocal easements, servitudes, subdivision rules or

regulations;

(b) It will not use, nor permit its lessees, licensees, invitees or agents to use, any portion of adjacent real property owned by Lessor which interferes with the wireless communications operation of Lessee;

(c) To the best of its knowledge, no Hazardous Materials, as defined below, have been generated, stored, disposed of or are present on or under the Leased Premises and the Easement(s) prior to the Commencement Date of this Lease;

(d) It has the full right, power, and authority to execute this Lease;

(e) It has good and marketable fee simple title to the Leased Premises and the Easement(s); and

(f) The Leased Premises constitutes a legal lot that may be leased without the need for any subdivision or platting approval.

7. **Lessee's Representations and Warranties.** Lessee represents and warrants that:

(a) It will not operate, or allow its tenants to operate any frequencies that would interfere with any governmental or Federal Aviation Administration (FAA) frequencies or equipment, or emergency services frequencies or equipment;

(b) All licensed contractors and subcontractors used by Lessee are authorized to work in the City of Palm Coast, Florida;

(c) It will keep current all licenses, permits, or certificates required for the operation and maintenance of the Leased Premises; and

(d) It is duly authorized to conduct business within the state of Florida.

(e) **Mechanic's Liens.** Lessee shall keep the Tower and the Site free and clear of all mechanic's and materialmen's liens arising from or relating to the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site and Lessee's structural enhancement of the Tower, if any, and for a one hundred twenty (120) day period after completion of the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or any structural enhancements to the Tower. If an installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or structural enhancement of the Tower, Lessee shall cause any such lien to be bonded or discharged of record within sixty (60) days of being notified of the lien. If Lessee fails to bond or discharge the lien within such sixty (60) day period, Lessor, in addition to any other rights or remedies available at law or equity, shall have the right to discharge the lien by paying the amount claimed to be due or to bond the lien. Any amount paid by Lessor in discharging or bonding any lien together with all reasonable costs and expenses, including, without limitation, reasonable attorney's fees and costs, shall be immediately due and payable to Lessor

upon demand from Lessor, and Lessee agrees to indemnify and hold harmless Lessor from all such amounts.

8. **Improvements, Utilities, Access, Maintenance.**

(a) Lessee may, at Lessee's expense, erect and maintain on the Leased Premises the Tower Facilities and other structures as noted in Section 5. The Tower Facilities are the exclusive property of the Lessee.

(b) Lessor grants Lessee a temporary construction easement in other real property owned by Lessor in form to be approved by the Parties as reasonably required to construct the Tower Facilities. Said easement will be for the duration of construction of the Tower Facilities, and will be in a location selected by Lessor.

(c) Lessee may install utilities and improve present utilities on the Leased Premises (including but not limited to the installation of emergency power generators), at Lessee's expense. Lessee has the right to permanently place utilities on the Easement(s) to service the Leased Premises and Tower Facilities, except that emergency power generators may not be placed on the Easement(s) (but may be placed in the Lease Premises). If utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Easement(s), Lessor agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities (other than emergency power generators) on other real property owned by Lessor without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s), provided that such alternative locations are reasonably available, and acceptable to Lessor. In which case, Lessor will, upon Lessee's request, execute a separate written easement to be recorded by Lessee evidencing this right.

(i) Lessee must pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee may draw electricity and other utilities from the existing utilities on the Site through a separate meter or obtain separate utility service from any utility company that will provide service to the Site (including a standby power generator for Lessee's exclusive use). Lessor agrees to sign such documents or easements as required by the utility company to provide service to the Leased Premises.

(d) Lessee will, during this Lease, enjoy ingress, egress, and access from the Leased Premises to an open and improved public road which presently exists under the easement form attached as Exhibit "B" to this Agreement. If the public road ceases to exist, Lessor will grant, if reasonably available, an easement to Lessee in a form acceptable to the Parties, and Lessee's sublessees and assigns, so they may, at their own expense, construct a suitable private access drive to the Leased Premises. To the degree such access is only practical across other property owned by Lessor, Lessor will execute a non-exclusive easement in a form to be approved by the Parties evidencing this right. Lessor will not engage in activities on the Easement(s) that will interfere with Lessee, its licensees, invitees, sublessees or agents' utilization of the Easement(s), and Lessee will not interfere with Lessor's use of the Easement(s). Such access will be provided twenty-four (24) hours per day, seven (7) days per week, excepted during City emergencies.

(e) After site plan approval, Lessor grants Lessee the right to clear all trees, undergrowth, or other obstructions to the Tower Facilities and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon Lessee's Tower Facilities and Easement(s) rights, with prior written notice to Lessor, and subject to Lessee obtaining all required permits.

(f) Lessee must maintain, at its own expense and in a manner consistent with good business practice, the Leased Premises in good overall appearance, repair and safe condition.

(i) Lessee must repair all damages to the Leased Premises or Easement(s) caused by Lessee's employees, or agents. The quality of the repairs, replacements, and maintenance must be equivalent to the original in material and workmanship.

(ii) All paint color and exterior signage, except for any paint color or signage required by applicable laws, regulations or permit conditions, must be submitted to and approved in writing by Lessor prior to application.

(iii) Lessee must maintain the Tower and Tower Facilities in good working order and appearance and must maintain the structural integrity of the Tower, in accordance with all industry standards, and building and safety codes.

(iv) In accordance with industry standards, Lessee shall perform all Electronic Industries Alliance/Telecommunications Industry Association inspections ("EIA/TIA Inspection") on the Tower Facilities. Lessee will provide copies of same reports to Lessor upon request. If Lessor determines (in Lessor's reasonable judgement) that there are safety or maintenance concerns on the Tower, at Lessor's full cost and expenses (and at no expense to Lessee and upon written notice by Lessor, Lessee shall perform an EIA/TIA Inspection of the Tower. In the event that such inspection shall detect a safety or maintenance deficiency on the Tower the Lessee shall (using commercially reasonable efforts) have thirty (30) days to cure all such deficiencies or the Lessor shall have the right to cure same. Any expenses (except the cost of an EIA/TIA Inspection) incurred by the Lessor in remedying such deficiencies on the Tower required to be performed by the Lessee may be recovered by Lessor.

(v) Lessee must, at its own expense, keep the Leased Premises mowed and groomed and not allow the accumulation of trash or debris. The landscaping must be maintained in a manner consistent with the Lessee's site plan, City codes, and good horticultural practices, and free of unsightly conditions.

(vi) Interruptions. Lessor and Lessee agree that (subject to Lessor's negligence, gross negligence, or willful misconduct), Lessor shall have no responsibility or liability whatsoever for interruptions, disruptions, or failures in the Lessee's Tower Facilities or the operation of the Lessee's Tower Facilities including, without limitation, equipment failures, utility failures, structural failures, or otherwise. Lessor shall not give any unauthorized access to third parties to Lessee's Equipment; Lessor shall not be responsible to Lessee for any unauthorized access

by third parties. In all maintenance, repair, or replacement work performed by the Parties on their equipment located on the Tower or Leased Premises, both Parties shall take all reasonable steps to not interrupt or interfere with the operations of the other parties on the site without Lessee's written agreement.

9. **Termination.** Except as otherwise provided, this Lease may be terminated with no penalty or further liability upon written notice as follows:

(a) Upon thirty (30) days written notice by Lessee to Lessor, if Lessee cannot obtain or maintain, despite commercially reasonable efforts, any license, permit or other Governmental Approval for the construction and operation of the Tower Facilities or Lessee's business;

(b) By Lessee, for any reason, upon one (1) year's advance written notice;

(c) By either Party upon default of any covenant or term, which default is not cured within forty-five (45) days of receipt of written notice of default (without however, limiting any other rights available to the Parties under any other provisions). However, if the defaulting party commences efforts to cure the default within such period and diligently pursues curing of the default to completion within a reasonable time period, the non-defaulting Party may not declare a default;

(d) So long as Lessee is not diligently pursuing a cure of the below defaults (within a reasonable time period), Lessor may terminate this Lease, upon 30 days written notice to Lessee, if:

(i) Lessee defaults in the payment of Rent, other charges or expenses, or any installment which has not been paid within thirty (30) days after Lessor's written notice to Lessee that payment is due;

(ii) Lessee files a voluntary petition in bankruptcy; or proceedings in bankruptcy are instituted against Lessee and Lessee is adjudicated bankrupt under such proceedings;

(iii) A receiver or trustee is appointed over the property of Lessee; or

(iv) A levy is issued or entered against leasehold interests of Lessee.

(e) Three years from the date that Lessee's last sublessee vacates (terminates the sublease and removes all equipment from Tower Facilities) or three years from the date of Lessee's most recent rent payment to Lessor, whichever is later, if Lessor desires to terminate this agreement, Lessor shall provide Lessee with one hundred and twenty (120) days ("Notice Period") prior written notice ("Notice"). If during the Notice Period a new sublessee signs a sublease, or Lessee is actively engaged in acquiring a new sublessee, Lessor's Notice shall be invalidated and this Agreement shall continue in full force and effect.

10. **Surrender.**

- (a) Upon termination or expiration of this Lease, Lessee will:
 - (i) Within one hundred twenty (120) days, remove the Tower Facilities, including the subsurface level and the foundation, and all other personal property and improvements which Lessee has installed on the Leased Premises and Easement(s) (except for portions of foundations greater than eighteen inches (18") below ground level);
 - (ii) Peaceably and quietly deliver possession of the Leased Premises to Lessor; and
 - (iii) Repair, at its sole cost, damage to the Leased Premises or adjacent land owned by Lessor due to Lessee's removal of its equipment or personal property to Lessor's reasonable satisfaction.
- (b) Upon a termination by Lessor pursuant to Section 9(d), Lessor will have the right at its option and with thirty (30) days prior-written notice to Lessee of the termination to:
 - (i) Remove Lessee and anyone claiming rights to the Leased Premises by summary proceedings or by any other lawful manner;
 - (ii) Repossess and enjoy the Leased Premises; and
 - (iii) Recover immediately from Lessee:
 - 1. Unpaid rent;
 - 2. Rent for the remainder of the then current Lease term, reduced to present value; and
 - 3. Any other damages caused by or resulting from the termination of the Lease.

NOTE: The rights of Lessor are cumulative. The exercise of rights under this Section will not exclude other rights and remedies authorized by law. No waiver by Lessor will operate as a waiver of any future default. Lessee expressly waives any right of redemption under any laws if Lessee is evicted or dispossessed for any cause.

11. **Removal Bond.** Lessee will provide Lessor with a copy of a construction or removal bond procured by Lessee in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00), naming Lessor as obligee thereunder, which bond may be used by Lessor toward the reasonable cost of removing and storing any Tower Facilities not removed by Lessee upon the expiration or termination of this Agreement and restoring the Lease Premises. Lessee will be obligated to timely pay required bond premiums in order to ensure that the bond remains in full force and effect during the Term and any Renewal Term of this Agreement, until such time as Lessee's obligations to

remove the Tower Facilities and make any repairs to the extent required under this Agreement are satisfied.

12. **Sublessee's Improvements.** Lessee's sublessee(s) may modify and erect additional improvements on the Leased Premises, including antennas, dishes, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment. The Lessee's and sublessee(s) have rights of ingress and egress to the Leased Premises and to install utilities to and on the Leased Premises and Easement(s) as if they were the Lessee under this Lease. Said sublessee(s) are subject to all terms and conditions of this Lease and its exhibits, and must be credit worthy and fully licensed. All sublessees must sign the agreement, attached as Exhibit "E," agreeing to be bound by the terms of the Lease.

13. **Permits.** Lessee must acquire and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at the Leased Premises. Lessee agrees not to allow any of the licenses, permits, or certificates to become delinquent.

14. **Compliance with Laws.** Lessee must, at its own expense, and at no expense to Lessor, materially comply with all laws, regulations, rules, ordinances, and requirements (enacted or may be enacted during this Lease) of the City, County, State and Federal authorities and agencies, which affect this Lease, the land granted by this Lease, and any improvements or operations on the Leased Premises. These include all lawful rules and regulations relating to Stormwater Pollution, Spill Prevention Control, and Countermeasure Program, and building and safety codes which may be promulgated by Lessor. Nothing in this Lease may be deemed to create an affirmative duty of Lessor to abrogate its sovereign right to exercise its police powers which includes the power to act under its zoning and land use codes.

15. **Destruction of Premises.** If the Leased Premises or the Tower Facilities are destroyed or damaged, to the extent that they hinder the effective use of the Tower Facilities in Lessee's judgment, based on reasonable standards used by similar types of businesses, Lessee may elect to terminate this Lease in full as of the date of the damage or destruction by notifying the Lessor in writing. All rights and obligations of Lessee to Lessor and vice versa will cease as of the date of the damage or destruction, except for Lessee's obligation to remove Lessee's improvements; pay any Rent due up to that date; and any other provisions of this Lease that may survive the termination of this Lease. Lessee will be entitled to the reimbursement of any Rent prepaid by Lessee.

16. **Condemnation.** If a condemning authority takes all of the Leased Premises or Easement(s), or a portion sufficient to render the Leased Premises or Easement(s), in the opinion of the Lessee, using reasonably acceptable standards for the profession, unsuitable for uses consistent with Section 5, this Lease will terminate as of the date the title vests in the condemning authority. Lessee may file its own claims against the condemning authority for the value of its Tower Facilities, moving expenses, prepaid rent and business dislocation expenses. A sale of all or part of the Leased Premises or Easement(s) to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, will be treated as a taking by condemnation.

17. **Insurance.** Lessee must purchase and maintain in full force and effect throughout the term

of this Lease insurance pursuant to Exhibit "F" attached hereto.

18. **Lessee's Environmental Covenants and Indemnity.** As used in this Lease, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is, or becomes designated as such, including those designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and the Clean Water Act.

(a) During the term of this Lease, Lessee must ensure the presence, use, storage, and disposal of any Hazardous Material, on or under the Leased Premises by Lessee, its agents, employees, business invitees, contractors or sublessees, comply with all laws, rules, regulations and orders. Lessee may not install or permit the installation of any underground storage tanks on the Leased Premises.

(b) Lessee, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Lessor from and against environmental damages caused by the presence of Hazardous Materials on the Leased Premises in violation of any applicable environmental laws and arising as the result of Lessee's activities after the execution of this Agreement. The warranty and indemnity of Lessor described in this Section will survive the termination of this Lease.

19. **Notices.** All notices required or permitted under this Lease must be in writing and are deemed effective upon personal delivery to a Party's employee, or upon certified U.S. Mail with return receipt signed by a Party's employee, or via overnight delivery upon signature receipt of a Party's employee. Such notices must be addressed to the Party at the addresses shown below, or at such other address or addresses as either Party designates to the other in writing under this Section:

As to Lessor: City of Palm Coast
Attn: IT Department and City Manager
160 Lake Avenue
Palm Coast, Florida 32164
(386) 986-3735
(386) 986-4775 fax

As to Lessee: Diamond Towers V LLC
Attn: Lease Administration
820 Morris Turnpike, Suite 104
Short Hills, NJ 07078

20. **Warranties, Covenants, and Guarantees.** Lessor makes no warranty, guarantee, or covenant of any nature, including covenants of quiet enjoyment, title or averment, or any warranty or representation concerning the condition of the Leased Premises. Lessor will not be responsible for any loss, damage, or costs which may be incurred by Lessee by any such condition. Lessee must take the Site and Leased Premises in as-is condition.

21. (RESERVED)

22. **Assignments and Subleases.**

This Agreement shall not be assigned by any party except as follows: 1) Lessee may assign this Agreement or any portion thereof to an affiliate or subsidiary of Lessee in which subsidiary or affiliate Lessee or Lessee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Lessor, 2) to a party who acquires a majority of the assets of Lessee, or 3) Lessee may grant a security interest in this Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Lessor shall execute such consent as may reasonably be required by Secured Parties. Lessee shall have the right, without Lessor's consent, to sublease or assign its rights under this Agreement and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Agreement. Upon assignment of all of its rights pursuant to this Agreement, and the execution of a written assumption of all of the terms and conditions of the Agreement by the assignee, Lessee shall be released from any further liability under this Agreement. Lessee shall have the right, without Lessor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Agreement and the lease.

23. **Successors and Assigns.** This Lease runs with the Leased Premises described on Exhibit "A" and is binding upon and inure to the benefit of the Parties, their respective heirs, successors, personal representatives, and assigns.

24. **Waiver of Incidental and Consequential Damages.** Except as specifically provided in this Agreement, in no event will Lessor or Lessee be liable to the other for, and Lessee and Lessor each hereby waive the right to recover incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

25. **Certifications.** Either Party may request, in writing, that the other Party certify information to a prospective mortgagee or purchaser. Such certification:

- (a) Must be transmitted within ten (10) days after receipt of a written request;
- (b) May be relied upon by the Party requesting it;
- (c) Is binding on the Party executing it; and
- (d) May include:
 - (i) the validity, force and effect of this Lease;
 - (ii) the extent to which this Lease has been supplemented or amended;
 - (iii) the existence of any default;
 - (iv) the existence of any offsets, counter-claims or defenses by the other Party;

- (v) the commencement and expiration dates of the term;
- (vi) any prepaid rent; and
- (vii) any other matter as may reasonably be requested.

26. **Site Requirements.** Lessee agrees that:

- (a) It will conduct its operation on the Leased Premises in strict compliance with this Lease and with the rules and regulations of the City of Palm Coast and all other governmental agencies.
- (b) It will transact its business in such a manner as to develop and maintain the good will and active interest of those enjoying the use of the Site and who have or may have occasion to use its facilities or to come into relations with the Site.
- (c) It will not use nor permit the use of the Leased Premises for any unlawful or immoral purpose.
- (d) It will not permit a nuisance to be created on the Leased Premises.
- (e) It will prevent any use of the Leased Premises that would interfere with or adversely affect the operation or maintenance of the Site, or otherwise constitute a hazard.
- (f) It will design the Structures so as to not interfere with the City's Emergency Services, and so that the City's Emergency Services, including fire, police, rescue, emergency management, 911 and related personnel, will have space on the tower and within the Leased Space, to support and facilitate, at a minimum:
 - (i) Up to three (3) DB-810 or equivalent antennas;
 - (ii) Up to three (3) one and five eights inch (1 5/8") transmission lines for an 800 MHz radio repeater system, a P-25 system standard or any other emergency services equipment the Lessor may deem necessary for public safety; and
 - (iii) The City of Palm Coast's installation of equipment relating to tourism/marketing such as cameras or other observational or data gathering equipment. The exact height on the tower and location within the Leased Space will be determined at a later date. The Parties agree to enter into an Antenna Sublease Agreement prior to the Lessee installing any equipment on the Structures.
 - (iv) NOTE: The space allocated to the City for the installation of their equipment is subject to the following conditions:
 - 1. The City's emergency services equipment may not exceed three (3) DB-810 or equivalent antennas and three (3) one and five eights inch (1 5/8") transmission lines.

2. The space must be greater than one hundred (100) feet AGL and the antennas cannot be more than fifteen (15) vertical feet.
3. The ground space required for such equipment must be in a location that does not impede existing and reasonably anticipated future additional subleases.
4. There is no monthly rent.
5. The cost of installing the equipment is at the sole cost of the Lessor.

27. **Right of Lessor to Inspect Leased Premises.** Lessor or its representative may, upon twenty-four (24) hours' notice to, and accompanied by a representative of Lessee, enter the Leased Premises to examine it and for any other lawful purpose, although no notice is required in the event of a City emergency.

28. **Taxes.**

(a) If ad valorem taxes are assessed following any adjustment or reversal to the Sales and Use Tax Section 212.031 Florida Statutes whereby Lessee, as a renter of real property on which the following are placed: towers, antennas, cables, accessory structures, or equipment used in the provision of mobile communications services; is exempt from sales and use taxes, Lessee must pay the portion of taxes directly attributable to the Leased Premises.

(i) Lessor will provide to Lessee a copy of any notice, assessment, billing, pro-rata allocation calculation, if necessary, and any other documentation reasonably requested by Lessee to allow Lessee to evaluate the payment relating to ad valorem taxes for which Lessee is responsible under this Agreement within thirty (30) days of receipt of the same by Lessor.

(ii) Lessee will have no obligation to pay any ad valorem taxes until Lessee has received the notice, assessment or billing relating to such payment.

(iii) Lessee has the right, at its option and cost, to appeal, challenge or seek modification of any ad valorem tax assessment or billing for which Lessee is wholly or partly responsible for payment.

(iv) Lessor will reasonably cooperate with Lessee in filing, prosecuting and perfecting any appeal or challenge to ad valorem taxes including executing any consent to appeal or other similar document.

(b) Lessee must pay all personal property taxes assessed on, or any portion of such taxes attributable to, the Tower Facilities. Lessee must pay any increase in real property taxes levied against the Leased Premises directly attributable to Lessee's use of the Leased Premises. Lessor agrees to furnish proof and calculation, if necessary, of such increase to Lessee. Should Lessee fail to pay, when due, any personal property taxes affecting the Leased Premises or the

Easement(s), Lessor may, but is not obligated to, pay the taxes and increase future installments of rent by the amount of taxes paid by Lessor on Lessee's behalf.

(c) NOTE:Lessor is a Florida Municipality and therefore, is a tax-exempt entity.

29. **Other Rights Reserved by Lessor.** Besides all other rights reserved by Lessor in the Leased Premises, Lessor expressly reserves the right of ingress and egress for Lessor and its designees over the Easement(s) and the Site, but excluding the exclusive Leased Premises (except in the event of emergencies or with prior written consent of Lessee).

30. **Lien for Lessee Improvements.** Under Section 713.10, Florida Statutes, no interest of the Lessor will be subject to liens for improvements made by Lessee. Lessee must notify the contractor or subcontractor making improvements to the Leased Premises of this provision. The knowing or willful failure of Lessee to provide such notice to the contractor will render the contract between the Lessee and contractor voidable at the option of the contractor. No party, including materialmen, contractors, and subcontractors, may file a mechanic's or materialmen's lien, for performing labor or furnishing materials for the benefit of Lessee, to the Leased Premises. If a lien is filed, Lessee is obligated to:

(a) Within thirty (30) days of receipt of notice from Lessor of such lien, discharge, bond or otherwise remove the lien. Without obviating its obligation in the preceding sentence, Lessee may contest such lien by instituting appropriate legal proceedings;

(b) Indemnify, defend, and hold harmless Lessor, at Lessee's cost and expense, any action, suit, or proceeding which may be brought to enforce any such lien; and

(c) Pay any damages and attorney's fees incurred by Lessor and satisfactorily discharge any judgment entered.

Lessor will give Lessee notice of any such action, suit, or proceeding and Lessee may assert all defenses, counterclaims, offsets or any other claim of any nature. The terms and provisions of this Section will survive the termination of this Lease.

31. **Responsibility of Lessee/Lessor.**

(a) Lessee is in control or possession only of portions of the Site as noted in Exhibit "A." Lessee does not assume responsibility for the conduct, operation, or condition of portions of the Site not included within the terms of this Lease.

(b) Lessor is not responsible for the actions of Lessee, its employees, agents, contractors, or subcontractors. Lessee will indemnify and hold harmless Lessor against all liabilities, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, appeals and causes of action, including reasonable attorney's fees and costs arising out of Lessee's negligent or intentional acts or omissions with respect to the Leased Premises (except for injuries, damages or claims which result from the negligence of the Lessor). Lessee must promptly reimburse Lessor for any proration of insurance as required.

32. **Further Acts.** Lessor will cooperate with Lessee in executing any documents to protect Lessee's use of the Leased Premises and Easement(s) and to take such action as may be reasonably required to implement this Lease. Lessor will cooperate with and join in filing any applications on behalf of Lessee with Federal, State and local governmental authorities to enable Lessee to perpetuate the intended use of the Leased Premises.

33. **Miscellaneous.**

(a) The substantially prevailing party in any litigation arising under this Lease will be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) Each Party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease and its exhibits constitute the entire agreement and understanding of Lessor and Lessee regarding the subject of this Option and Ground Lease, and supersedes all offers, negotiations and other agreements. There are no other representations or understandings of any kind. Any amendments to the Lease must be in writing and executed by Lessor and Lessee.

(d) If either Lessor or Lessee is represented by a broker in this transaction, that Party is responsible for any fees due such broker and must hold the other Party harmless from any claims for commission.

(e) This Lease is construed under the laws of the state of Florida. Venue will be in the courts of Flagler County, Florida, and for federal actions, in Orlando, Florida. In the event of any dispute, the parties agree to waive all rights to demand a jury trial.

(f) If any term of this Lease is void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.

(g) This Lease may be executed in two or more counterparts, all of which will be one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties.

(h) Each of the Parties represent and warrant they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.

(i) **Waiver of Compliance.** Any failure of Lessee to comply with any obligation, covenant, agreement or condition herein may be expressly waived by Lessor, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

34. **Indemnification.** Lessee agrees to protect, defend, reimburse, indemnify and hold harmless Lessor, its agents, employees and officers (the "Indemnified Parties"), against all claims, causes of actions, liabilities, expenses, losses, costs, fines and damages, including reasonable attorneys' fees at trial and on appeal, to the extent allowed by law, arising out of this Lease, and Lessee's

negligent or intentional acts or omissions with respect to the Leased Premises, Site, or Easement(s), excluding injuries caused by the negligent or willful misconduct of the Indemnified Parties. This Section also applies to claims arising out of contamination caused to the Site after the Commencement Date by the negligent or intentional acts or omissions of Lessee, its agents, or employees, including contamination of the soil or storm water by fuel, gas, chemicals, or other substances deemed by the Environmental Protection Agency to be environmental contaminants. Nothing in this Lease may be construed as a waiver of Lessor's limitation of liability as noted in Section 768.28(5), Florida Statutes.

35. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into the date first written above.

OPTIONOR/LESSOR:

Witness:

Witness:

CITY OF PALM COAST, FLORIDA

By: _____

Name: _____

Title: _____

Date: _____

OPTIONEE/LESSEE:

Witness:

Witness:

DIAMOND TOWERS V LLC

By: _____

Name: Michael G. Brett

Title: COO

Date: _____

EXHIBIT "A"

Description of Real Property

A PARCEL OF LAND LYING IN RESERVED PARCEL A, SECTION 25, AT PALM COAST, AS RECORDED IN MAP BOOK 9, PAGE 3 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE (60' R/W) WITH THE EASTERLY RIGHT OF WAY OF BELLE TERRE PARKWAY (150' R/W) ALL ACCORDING TO SAID MAP BOOK 9, PAGE 3; THENCE NORTH 86°24'21" EAST 540.36 FEET ALONG SAID SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE TO A POINT OF CURVATURE; THENCE NORTHEASTERLY 209.20 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2350.00 FEET AND A CENTRAL ANGLE OF 05°06'02" TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE 193.70 FEET ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 2350.00 FEET AND A CENTRAL ANGLE OF 04°43'24" TO A POINT OF INTERSECTION WITH THE EASTERLY BOUNDARY LINE OF SAID RESERVED PARCEL A; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE ALONG THE EASTERLY BOUNDARY LINE OF RESERVED PARCEL A SOUTH 27°24'27" EAST 1183.51 FEET TO A POINT; THENCE DEPARTING SAID EASTERLY BOUNDARY LINE OF RESERVED PARCEL A NORTH 85°51'53" WEST 860.99 FEET; THENCE NORTH 02°45'42" EAST 361.29 FEET; THENCE SOUTH 88°42'02" EAST 197.53 FEET; THENCE NORTH 08°41'41" WEST 601.89 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

TAX ID: 07-11-31-7025-00RPA-0010

BEING THE SAME PROPERTY CONVEYED TO CITY OF PALM COAST, FLORIDA, GRANTEE, FROM FLAGLER COUNTY, FLORIDA, GRANTOR, BY DEED RECORDED 09/21/2001, AS BOOK 770, PAGE 41 OF THE FLAGLER COUNTY RECORDS.

PROPERTY OWNER APPROVAL _____

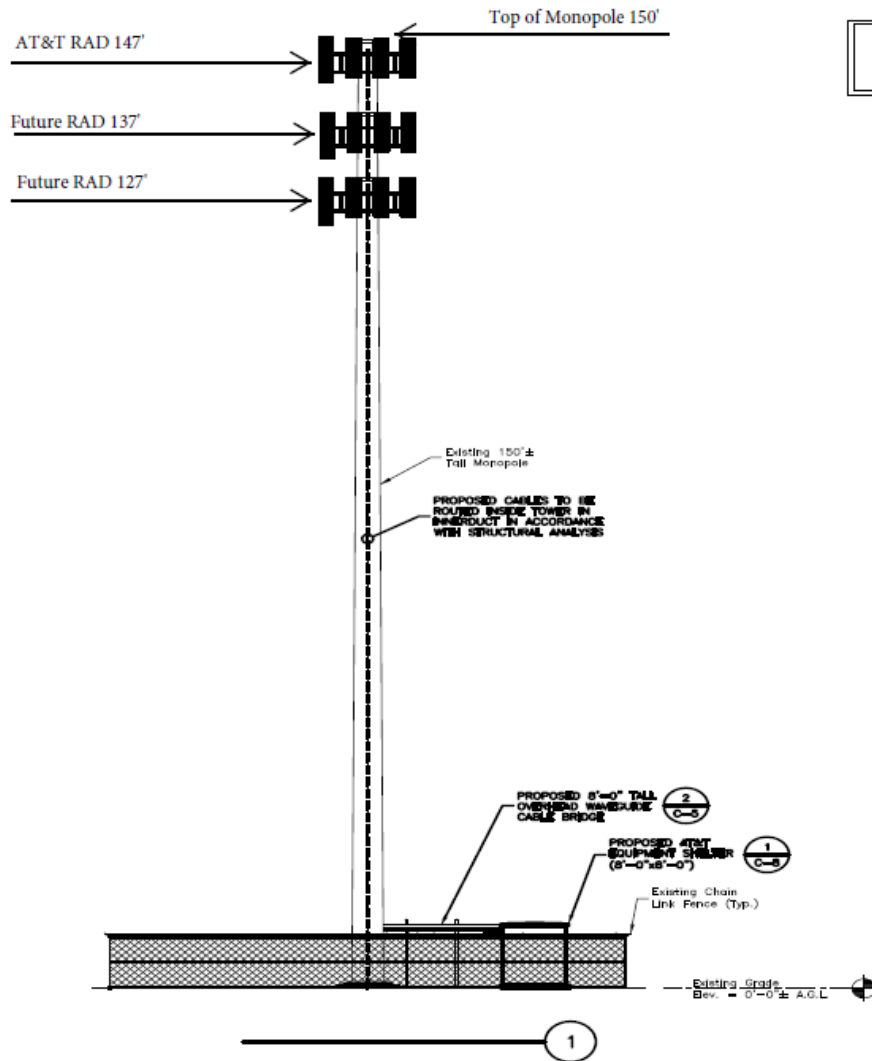
DATE _____

TOWER OWNER APPROVAL _____

DATE _____



REV 1: REVISED PER COMMENTS FROM DIAMOND COMMUNICATIONS



NOTE:
ALL INSTALLED EQUIPMENT IS NOT TO EXCEED 150'-0" A.G.L.

EXHIBIT "B"

Easement Agreement

PREPARED BY AND RETURN TO:

Diamond Towers V LLC
Attention: Legal Department
820 Morris Turnpike, Suite 104
Short Hills, New Jersey 07078

Site Name:

Parcel:

Cross Reference:

Deed Book: ____; Page ____, et. seq.

_____ County Clerk

ACCESS AND UTILITIES EASEMENT AGREEMENT

This Access and Utilities Easement Agreement (the "**Agreement**") dated the ____ day of _____, 201__ ("**Effective Date**") is among CITY OF PALM COAST, FLORIDA ("**Grantor**"), and DIAMOND TOWERS V LLC, a Delaware limited liability company ("**Grantee**").

WHEREAS, the Grantor is the owner of certain property located in the City of Palm Coast, County of Flagler, State of Florida, which property is more particularly described on **Exhibit "A"** hereto ("**Grantor's Property**"). Grantee is leasing a portion of that certain property located adjacent to Grantor's Property ("**Grantee's Leased Property**"). Grantor and Grantee desire to enter into this Agreement for the purpose of creating certain easements to benefit the Grantee's Leased Property, as more particularly described hereinafter.

For and in consideration of One and 00/100 Dollars (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, hereby agree as follows:

1. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Access Easement**"), for the benefit of the Grantee's Leased Property, over and across a portion of Grantor's Property (the "**Easement Area**"), to and from Grantee's Leased Property and a public right of way, for the purpose of providing access, ingress and egress to Grantee's Leased Property to and from a public right of way. The Easement Area is in the location shown on **Exhibit "B"**. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to free and unencumbered ingress and egress over and across the Easement Area.

2. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Utilities Easement**", and together with the Access Easement, collectively, the "**Easements**"), for the benefit of Grantee's Leased Property, over and across the Easement Area, for the purpose of installing, operating, maintaining and repairing communication and power utility lines and other such necessary utilities (the "**Facilities**") to service Grantee's Leased

Property. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to unencumbered ingress and egress over and across Grantor's Property to access the Facilities and the right to use, repair, replace, and maintain all Facilities hereafter placed in the Easement Area.

3. Reservation of Rights. Grantor hereby expressly reserves unto itself, its successors, assigns, grantees and invitees, the right, in its sole discretion, to use the Easement Area for any purpose not inconsistent with the rights herein granted to Grantee. In addition and not by limitation, but way of example, Grantor its successors, grantees, invitees and assigns, reserve the right from time to time to improve the Easement Area with pavement, curbing and landscaping and grant additional easements and licenses for access, and utilities or any other purposes as it may deem necessary, over, upon, across and under the Easement Area, provided that such easements or licenses do not unreasonably interfere with Grantee's use of the Easement Area pursuant to the terms hereof. No structures of any kind will be constructed in the Easement Area without the mutual agreement of the parties (not to be unreasonably withheld).

4. The Grantee and its assigns realize that the Grantor may request and obtain a relocation of the Easements. In the event the Grantor does request a relocation of the Easements, the Grantor must provide a substitute access easement and utility easement and must record said new easements in the public records of Flagler County, Florida, and shall improve the path located on said new easements to the current level of improvement enjoyed by the current Easements. Thereafter, Grantee, or its successors and assigns, shall remove by recordable release or quit-claim deed their interest in these current Easements if requested by the Grantor. Notwithstanding the above, all of Grantee's costs and expenses associated with relocating the Easements (including but not limited to costs and expenses associated with equipment removal and reconstruction) shall be paid in full by Grantor, and any said relocation of the Easements shall be conducted with minimal disruption to Grantee.

5. Assignment. Grantee may assign this Agreement under the following terms: 1) to an affiliate or subsidiary of Grantee in which subsidiary or affiliate Grantee or Grantee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Grantor, 2) to a party who acquires a majority of the assets of Grantee, or 3) Grantee may grant a security interest in this Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Grantor shall execute such consent as may reasonably be required by Secured Parties. Grantee shall have the right, without Grantor's consent, to sublease or assign its rights under this Agreement and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Agreement. Upon assignment of all of its rights pursuant to this Agreement, and the execution of a written assumption of all of the terms and conditions of the Agreement by the assignee, Grantee shall be released from any further liability under this Agreement. Grantee shall have the right, without Grantor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Agreement and the lease.

6. Termination and Amendments. This Agreement may be cancelled, changed, modified or amended, in whole or in part, in writing signed by the parties hereto or their respective successors and assigns.

7. Entire Agreement. Notwithstanding any verbal representation, this Easement constitutes the entire agreement between the parties. This Easement supersedes any and all prior representations, written or oral heretofore made by the parties concerning the subject matter of the Easement, and any such representations are null and void and of no force or effect whatsoever.

8. The Term of this Agreement shall be continuous, uninterrupted, and shall only expire: (a) upon notification from Grantee of termination of the Agreement; or (b) one (1) year after the Grantee, or its successors or assigns: (i) fails to have an interest in Grantee's Leased Property; (ii) does not have facilities or equipment located within Grantee's Leased Property, and (iii) no longer conducts operations within the Grantee's Leased Property.

9. Any notice sent pursuant to this Agreement shall be in writing and sent by telecopy, personal delivery or by reputable courier, or by depositing it with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party. The initial addresses of the parties shall be as set forth below:

To Grantor:

City of Palm Coast
Attn: City Manager
160 lake Avenue
Palm Coast, FL 32164

To Grantee:

Diamond Towers V LLC
Attention: Legal Department
820 Morris Turnpike
Suite 104
Short Hills, New Jersey 07078

10. The Easements granted herein shall be appurtenant to and shall run with Grantee's Leased Property, and shall be binding upon and inure to the benefit of each party hereto, its successors, assigns, mortgagees, tenants, lessees, licensees, contractors, subcontractors, agents, representatives and invitees.

11. This Agreement shall be governed by and enforced in accordance with the laws of the State of Florida. In the event of any dispute, the parties agree to waive all rights to demand a jury trial.

Witness:

“GRANTEE”

Diamond Towers V LLC

Print:

Exhibit Only – Not for Signature

Name: _____

Title: _____

Date: _____

Print:

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

On the ____ day of _____ in the year 201__, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

EXHIBIT “A”

TO ACCESS AND UTILITIES EASEMENT AGREEMENT

Description of Grantor’s Property

EXHIBIT “B”

TO ACCESS AND UTILITIES EASEMENT AGREEMENT

Easement Area

EXHIBIT "C"

Site:

MEMORANDUM OF LEASE

This Memorandum of Lease is made on _____, 201_, by and between the CITY OF PALM COAST, as Lessor, at 160 Lake Avenue, Palm Coast, Florida, 32164, and DIAMOND TOWERS V LLC, as Lessee, at 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078.

1. Lessor and Lessee are parties to an Option and Ground Lease Agreement dated _____, 201_ (the "Lease Agreement"); the terms and provisions of which are incorporated by this reference. The premises covered by the Lease Agreement are in the _____, as described in the legal description attached as **Exhibit "A"** ("Leased Premises").
2. Under the Lease Agreement, Lessor has granted to Lessee an easement for ingress, egress and utilities for the duration of the Lease Agreement over those lands more particularly described on **Exhibit "B,"** as attached. The easement rights include the right and authority of Lessee to grant or assign to third parties all or some of the easement rights granted to Lessee, subject to the written consent of Lessor.
3. The Lease Agreement provides for an initial term of five (5) years which commenced on _____. The Lease provides for nine (9) additional five (5) year renewal terms, which will occur automatically, unless Lessee delivers written notice of intent not to renew to Lessor thirty (30) days prior to the expiration of the initial term, or the renewal term then in effect.
4. Under Section 713.10, Florida Statutes, the Lease Agreement provides that the interest of the Lessor is not subject to liens for improvements made by Lessee, and that Lessee must notify any contractor making such improvements of this provision of the Lease Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Lease as of the date first written above.

LESSOR:

Witness:

Witness:

CITY OF PALM COAST, FLORIDA

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

STATE OF FLORIDA
COUNTY OF _____

I, the undersigned Notary Public for the County and State, do certify that _____, as _____, appeared before me this day, and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this ____ day of _____ 201__.

Notary Public: _____

Print Name: _____

{affix notary stamp/seal}

My Commission Expires: _____

LESSEE:

Witness:

Witness:

DIAMOND TOWERS V LLC

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

On the ____ day of _____ in the year 201__, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

EXHIBIT “D”

Rent Schedule

Rent: -Rent shall be as set forth in Section 2 Pricing Terms of the Wireless Facilities Contract dated May 12, 2017 which section is hereby attached hereto Exhibit “G”.

Rent is payable to the City of Palm Coast, Florida. Lessor must provide Lessee with an accurate and executed W-9 Form to facilitate payment.

“Sublease Fees” shall mean all rents, licenses and other fees (but excluding utilities, taxes and similar expense reimbursements to Lessee which are specifically identified in a sublease as being charged in addition to rent or license fees) actually received by the Lessee pursuant to a particular Sublease during the applicable month. In no event, shall Lessee have the right to deduct expenses from Sublease Fees.

“Broadband Tenant” shall mean as Cellular/PCS providers such as Alltel, AT&T, Cingular, Sprint, Nextel, T-Mobile, MetroPCS and Verizon.

“Non-Broadband Tenant” shall mean 2-way, paging, and internet providers.

EXHIBIT "E"

FORM OF TRANSFER AGREEMENT

AGREEMENT OF ASSIGNEE/SUBLESSEE

Under this Agreement of Assignee/Sublessee, made this ____ day of _____,
20_____, _____
("Assignee/Sublessee") acknowledges and agrees as follows:

1. Assignee/Sublessee acknowledges that Diamond Towers V LLC is transferring a portion of its interest in the Leased Premises to Assignee/Sublessee as reflected in Exhibit _____.

2. Assignee/Sublessee acknowledges that Diamond Towers V LLC and the City of Palm Coast, have entered into an Option and Ground Lease Agreement dated as of _____, 20__, (copy attached) which governs the Leased Premises and Easement(s). The Memorandum of Lease (not the Option and Ground Lease Agreement) is recorded in O.R. Book _____, Page _____, Public Records of Flagler County, Florida. Assignee/Sublessee acknowledges having received a copy of said Option and Ground Lease Agreement and understands all of the terms, provisions, conditions, and limitations of that Agreement.

3. In consideration for receiving the benefits of the transfer of a portion of the Leased Premises and the accompanying Easement(s) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee/Sublessee agrees to be bound by all of the terms, provisions, conditions, and limitations of that Agreement as the same may apply to the Leased Premises and the accompanying Easement(s) owned by Diamond Towers V LLC or in which Diamond Towers V LLC may have an interest, including the condition that the undersigned Assignee/Sublessee obtained this same agreement from any subsequent Assignee/Sublessee.

Exhibit Only – Not for Signature

(print name)

Exhibit "F"

INSURANCE

(a) The Lessee shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the Lessor and with only such terms and conditions as may be acceptable to the Lessor:

(1) Workers Compensation/Employer Liability: The Lessee shall provide Worker Compensation insurance for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. Employers' Liability Insurance at limits not less than the following:

\$500,000 Each Accident

\$500,000 Disease Each Employee

\$500,000 Disease (Policy Limit)

(2) Comprehensive General Liability: The Lessee shall provide coverage for all operations including, but not limited to, contractual, independent contractor, products and complete operations and personal injury with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage - each occurrence

\$2,000,000 General Aggregate

(3) Comprehensive Business Automobile Liability: The Lessee shall provide complete coverage with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4) Professional Liability: The Lessee shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting the Lessee against claims of the City for negligence, errors, or omissions in the performance of services to be performed and furnished by the Lessee.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as use of aircraft or watercraft, use of explosives, and any high-risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the Lessor which may, thereupon, required additional insurance coverage's.

(b) All insurance other than Workers Compensation and Professional Liability that must be maintained by the Lessee shall specifically include the Lessor as an additional insured. All insurance minimum coverages extend to any subcontractor, and the Lessee shall be responsible for all subcontractors.

(c) The Lessee shall provide Certificates of Insurance to the Lessor evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Agreement. These

Certificates of Insurance shall become part of this Agreement. Neither approval by the Lessor nor failure to disapprove the insurance furnished by a Lessee shall relieve the Lessee of the Lessee's full responsibility for performance of any obligation including the Lessee's indemnification of the Lessor under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the Lessee shall, as soon as the Lessee has knowledge of any such circumstance, immediately notify the Lessor and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Lessee has replaced the unacceptable insurer with an insurer acceptable to the Lessor, the Lessee shall be deemed to be in default of this Agreement.

(d) Intentionally Deleted.

(e) The Lessee shall provide Certificate of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the Lessee has obtained insurance of the type, amount, and classification required by this Agreement.

(f) Nothing in this Agreement or any action relating to this Agreement shall be construed as the Lessor waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The Lessor shall not be obligated or liable under the terms of this Agreement to any party other than the Lessee. There are no third-party beneficiaries to this Agreement.

(h) The Lessee is an independent Agreement or and not an agent, representative, or employee of the Lessor. The Lessor shall have no liability except as specifically provided in this Agreement.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Lessor.

Exhibit “G”

Wireless Facilities Contract

[to be attached to executable]

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Public Works	Amount
Item Key		Account
Subject	RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH TETRA TECH, INC., AND DEBRIS TECH, INC., FOR DISASTER MONITORING SERVICES	
Background : During times of hurricanes and other extreme events for which we will seek FEMA reimbursement for costs associated with cleanup activities, FEMA requires that there be monitoring of the debris hauling and removal services. City staff advertised, solicited, and received competitive proposals for the disaster debris monitoring services in accordance with the City’s Purchasing Policy. Staff recommends City Council approving Master Service Agreements with Tetra Tech, Inc., and DebrisTech, Inc. In support of this recommendation, the project bid overview and notice of intent to award are attached. These Master Service Agreements will be in place to be used only if needed for an emergency; therefore, there are no funds to be encumbered at this time.		
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING MASTER SERVICE AGREEMENTS WITH TETRA TECH, INC. AND DEBRISTECH, INC. FOR DISASTER MONITORING SERVICES		

RESOLUTION 2019-____
DISASTER MONITORING SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE MASTER SERVICES AGREEMENTS WITH TETRA TECH, INC AND DEBRISTECH INC., FOR DISASTER MONITORING SERVICES.; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID GRANT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Tetra Tech, Inc., and DebrisTech, Inc., desire to provide Disaster Monitoring Services, to the City of Palm Coast; and

WHEREAS, the City of Palm Coasts desires to have Tetra Tech, Inc., and DebrisTech, Inc., for Disaster Monitoring Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AS FOLLOWS

SECTION 1. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of the Master Services Agreements with Tetra Tech, Inc. and DebrisTech, Inc., as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A: Grant Agreement with Flagler Volunteer Services, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: Disaster Monitoring - RFP-ADM-19-93

Date: 10/15/2019

Appeal Deadline: Appeals must be Filed by 5:00 PM on 10/17/2019

Firm	Points
Tetra Tech, Inc.	96.5
DebrisTech, LLC	91
True North Emergency Management	86.25
Universal Engineering Sciences	67.5

The intent of the City of Palm Coast is to award Disaster Monitoring to Tetra Tech, Inc. and DebrisTech, LLC.

For questions regarding the NOIT please contact project coordinator klittle-downey@palmcoastgov.com.

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaalgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



please recycle

palmcoastgov.com



RFP-ADM-19-93 - Disaster Monitoring

Project Overview

Project Details	
Reference ID	RFP-ADM-19-93
Project Name	Disaster Monitoring
Project Owner	Kelly Downey
Project Type	RFP
Department	Procurement
Current Spend	\$0.00
Target Savings	0%
Budget	\$500000.00 - \$531242.00
Project Description	<p>This Request for Proposals is issued for the purpose of securing the services of one or more experienced disaster monitoring contactors (Contractor) to perform monitoring functions related to the removal and lawful disposal of disaster-generated debris (other than household putrescible garbage) from public property and public right-of-ways, on site and at Temporary Debris Staging and Reduction Sites (TDSRS) within the City immediately after a hurricane or other disaster.</p>
Open Date	Sep 04, 2019 8:00 AM EDT
Intent to Bid Due	Sep 26, 2019 2:00 PM EDT
Close Date	Sep 26, 2019 2:00 PM EDT



Awarded Suppliers	Reason	Score
Tetra Tech, Inc.		96.5 pts
DebrisTech, LLC		91 pts

Seal status

Requested Information	Unsealed on	Unsealed by
Forms 1 -5	Sep 26, 2019 2:05 PM EDT	Kelly Downey
Price Schedule	Sep 26, 2019 2:05 PM EDT	Kelly Downey
Proposal	Sep 26, 2019 2:05 PM EDT	Kelly Downey
Questionnaire	Sep 26, 2019 2:05 PM EDT	Kelly Downey
Addendum #1	Sep 26, 2019 2:05 PM EDT	Kelly Downey



Submissions

Supplier	Date Submitted	Name	Email	Confirmation Code
Tetra Tech, Inc.	Sep 25, 2019 2:27 PM EDT	April Waits	april.waits@tetrattech.com	NTkyMDc=
Universal Engineering Sciences	Sep 26, 2019 9:41 AM EDT	Brian Pohl	bpohl@universalengineering.com	NTkyOTY=
DebrisTech, LLC	Sep 26, 2019 11:45 AM EDT	Herman Dungan	hdungan@debristech.com	NTkzMzQ=
True North Emergency Management	Sep 26, 2019 1:02 PM EDT	Dade Duke	dduke@truenorthem.com	NTkzNDg=



Project Criteria

Criteria	Points	Description
Forms 1 - 5	Pass/Fail	Forms 1 -5
Price Schedule, Questionnaire, & Proposal	Pass/Fail	References, Questionnaire, Price Schedule, & Proposal
Project Understanding and Proposal	25 pts	Project Understanding and Proposal Below Average 5 Points Average 10 Points Above Average 15 Points Well Above Average 20 Points Outstanding 25 Points
Experience with Similar Projects	20 pts	Experience with Similar Projects Below Average 4 Points Average 8 Points Above Average 12 Points Well Above Average 16 Points Outstanding 20 Points
Proposal Cost/Price	15 pts	Proposal Cost/Price Below Average 3 Points Average 6 Points Above Average 9 Points Well Above Average 12 Points Outstanding 15 Points
Qualifications of Key Personnel	20 pts	Qualifications of Key Personnel Below Average 4 Points Average 8 Points Above Average 12 Points Well Above Average 16 Points Outstanding 20 Points



Proposed Innovations	10 pts	Proposed Innovations Below Average 2 Points Average 4 Points Above Average 6 Points Well Above Average 8 Points Outstanding 10 Points
Questionnaire	10 pts	Questionnaire Below Average 2 Points Average 4 Points Above Average 6 Points Well Above Average 8 Points Outstanding 10 Points
Addendum #1	Pass/Fail	Addendum #1
Total	100 pts	



Scoring Summary

Active Submissions

	Total	Forms 1 - 5	Price Schedule, Questionnaire, & Proposal	Project Understanding and Proposal	Experience with Similar Projects
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	/ 25 pts	/ 20 pts
Tetra Tech, Inc.	96.5 pts	Pass	Pass	24.25 pts	19.5 pts
DebrisTech, LLC	91 pts	Pass	Pass	23.75 pts	17.25 pts
True North Emergency Management	86.25 pts	Pass	Pass	23.25 pts	18.75 pts
Universal Engineering Sciences	67.5 pts	Pass	Pass	16.75 pts	13.5 pts

	Proposal Cost/Price	Qualifications of Key Personnel	Proposed Innovations	Questionnaire	Addendum #1
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Supplier	/ 15 pts	/ 20 pts	/ 10 pts	/ 10 pts	Pass/Fail
Tetra Tech, Inc.	14.75 pts	19 pts	9.5 pts	9.5 pts	Pass
DebrisTech, LLC	13.25 pts	19 pts	8.75 pts	9 pts	Pass
True North Emergency Management	12 pts	18.5 pts	7.25 pts	6.5 pts	Pass
Universal Engineering Sciences	7.75 pts	14.25 pts	6.5 pts	8.75 pts	Pass

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Stormwater & Engineering	Amount
Item Key		Account
Subject	RESOLUTION 2019-XX APPROVING A MASTER SERVICES AGREEMENT WITH STRICKLAND SOD FOR SOD MATERIALS AND SOD INSTALLATION	
Background : The City purchases sod on an as-needed basis for City-Wide use either by the piece or by the pallet or by rolls, picked up by the City, delivered or installed. Each department will purchase sod based on their specific needs. City Staff advertised and solicited bids for sod materials and sod installation in accordance with the City's Purchasing Policy. City Staff recommends that the City Council approve a Master Services Agreement with Strickland Sod Farm, Inc. of Bunnell, FL the notice of intent to award and project bid overview are attached to this item. City staff will purchase items on an as-needed basis upon City Council approved budgeted funds.		
Recommended Action : ADOPT RESOLUTION 2019-XX APPROVING MASTER SERVICES AGREEMENT WITH STRICKLAND SOD FOR SOD MATERIALS AND SOD INSTALLATION		

**RESOLUTION 2019-
STRICKLAND SOD FARM, INC.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF A MASTER SERVICE AGREEMENT WITH STRICKLAND SOD FARM, INC., FOR THE PURCHASE OF SOD MATERIALS AND SOD INSTALLATION FOR CITY-WIDE USE; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE CONTRACTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Strickland Sod Farms, Inc., desires to contract with the City of Palm Coast, for the sale of sod materials and sod installation for city-wide use; and

WHEREAS, the City Council of the City of Palm Coast desires to contract with the Strickland Sod Farms, Inc., for the purchase of the above referenced goods and services.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF A MASTER SERVICE AGREEMENT. The City Council hereby approves the terms and conditions of a master service agreement with Strickland Sod Farms, Inc. for sod materials and sod installation for city-wide use, which is attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute any necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impart the validity, force or effect of any other section or part of the Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on the 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A –Contract with Strickland Sod Farm, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Administrative Services & Economic Development
Central Services Division

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: ITB-PW-U-20-02 - Sod Materials and Sod Installation

Date: 10/17/2019

Appeal Deadline: Appeals must be filed by 5:00 PM on 10/22/2019

Firm	Sod Type	Bid	
Strickland Sod Bunnell, FL	Tifway 419	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	Not Available Not Available \$.55 Installed \$.55 Installed Utility \$.75
Strickland Sod Bunnell, FL	DOT Certified Bahia	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.14/\$.20/\$.30 \$.14/\$.20/\$.28 \$.14/\$.20/\$.28 \$.14/\$.20/\$.28 Utility \$.75
Strickland Sod Bunnell, FL	Bahia Pensacola	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.12/\$.18/\$.30 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 Utility \$.75
Strickland Sod Bunnell, FL	Bahia Argentine	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.12/\$.18/\$.30 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 Utility \$.75
Strickland Sod Bunnell, FL	Bahia	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.12/\$.18/\$.30 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 \$.12/\$.18/\$.26 Utility \$.75



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city of PALM COAST

Administrative Services & Economic Development
Central Services Division

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

Strickland Sod Bunnell, FL	Common Bermuda	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.14/\$.20/\$.30 \$.14/\$.20/\$.28 \$.14/\$.20/\$.28 \$.14/\$.20/\$.28 Utility \$.75
Strickland Sod Bunnell, FL	Coastal Bermuda,	No Bid	No Bid
Strickland Sod Bunnell, FL	St. Augustine, St. Augustine Palmetto, & St. Augustine Seville	No Bid	No Bid
Strickland Sod Bunnell, FL	Floritam St. Augustine	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.25/\$.32/\$.40 \$.25/\$.32/\$.36 \$.25/\$.32/\$.36 \$.25/\$.32/\$.36 Utility \$.75
Strickland Sod Bunnell, FL	Centipede	No Bid	No Bid
Strickland Sod Bunnell, FL	Celebration	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	Not Available Not Available \$.55 Installed \$.55 Installed Utility \$.75
Strickland Sod Bunnell, FL	Latitude 36 Bermuda	No Bid	No Bid
Strickland Sod Bunnell, FL	Zoysia	1 – 2,000 2,001 – 6,000 6,001 - 10,000 Over 10,000	\$.30/\$.38/\$.42 \$.30/\$.38/\$.40 \$.30/\$.38/\$.40 \$.30/\$.38/\$.40 Utility \$.75



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city of PALM COAST

Administrative Services & Economic Development
Central Services Division

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

The intent of the City of Palm Coast is to award ITB-PW-U-20-02 to Strickland Sod

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaigout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



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ITB-PW-20-02 - Sod Materials and Sod Installation

Project Overview

Project Details	
Reference ID	ITB-PW-20-02
Project Name	Sod Materials and Sod Installation
Project Owner	Kelly Downey
Project Type	ITB
Department	Procurement
Current Spend	\$1.19
Budget	\$0.00 - \$0.00
Project Description	This Invitation to Bid is issued for the purpose of soliciting proposals from qualified vendors to provide sod services for various sod projects



	throughout the city.
Open Date	Oct 02, 2019 8:00 AM EDT
Intent to Bid Due	Oct 17, 2019 2:00 PM EDT
Close Date	Oct 17, 2019 2:00 PM EDT

Awarded Suppliers	Reason	Score
Strickland Sod Farm, Inc.		1,500.00 pts

Seal status

Requested Information	Unsealed on	Unsealed by
Forms 1 - 4	Oct 17, 2019 2:08 PM EDT	Kelly Downey
Pricing Form	Oct 17, 2019 2:08 PM EDT	Kelly Downey
References	Oct 17, 2019 2:08 PM EDT	Kelly Downey



Submissions

Supplier	Date Submitted	Name	Email	Confirmation Code
Strickland Sod Farm, Inc.	Oct 17, 2019 12:59 PM EDT	Angie Strickland	stricksod@pcfl.net	NjA5MDg=

Project Criteria

Criteria	Points	Description
Forms 1, 2, 3, 4, & References	Pass/Fail	Forms 1, 2, 3, 4, and References
Pricing Review	Pass/Fail	
Tifway 419	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
DOT Certified Bahia	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Bahia Pensacola	100 pts	Pick up Pricing Delivered Pricing Installed Pricing



Bahia Argentine	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Bahia	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Common Bermuda	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Coastal Bermuda	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
St. Augustine	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
St. Augustine Palmetto	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
St. Augustine Seville	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Floritam St. Augustine	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Centipede	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Celebration	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Latitude 36 Bermuda	100 pts	Pick up Pricing Delivered Pricing Installed Pricing
Zoysia	100 pts	Pick up Pricing Delivered Pricing Installed Pricing



Total	1500 pts	
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Scoring Summary

Active Submissions

	Total	Forms 1, 2, 3, 4, & References	Pricing Review	Tifway 419	DOT Certified Bahia
Supplier	/ 1,500.00 pts	Pass/Fail	Pass/Fail	/ 100 pts	/ 100 pts
Strickland Sod Farm, Inc.	1,500.00 pts	Pass	Pass	100 pts (\$999,999,999.99)	100 pts (\$0.14)

	Bahia Pensacola	Bahia Argentine	Bahia	Common Bermuda	Coastal Bermuda
Supplier	/ 100 pts	/ 100 pts	/ 100 pts	/ 100 pts	/ 100 pts
Strickland Sod Farm, Inc.	100 pts (\$0.12)	100 pts (\$0.12)	100 pts (\$0.12)	100 pts (\$0.14)	100 pts (\$9,999,999.99)



	St. Augustine	St. Augustine Palmetto	St. Augustine Seville	Floritam St. Augustine	Centipede
Supplier	/ 100 pts	/ 100 pts	/ 100 pts	/ 100 pts	/ 100 pts
Strickland Sod Farm, Inc.	100 pts (\$9,999,999.99)	100 pts (\$9,999,999.99)	100 pts (\$99,999,999.99)	100 pts (\$0.25)	100 pts (\$99,999,999.99)

	Celebration	Latitude 36 Bermuda	Zoysia
Supplier	/ 100 pts	/ 100 pts	/ 100 pts
Strickland Sod Farm, Inc.	100 pts (\$0.55)	100 pts (\$9,999,999.99)	100 pts (\$0.3)

City of Palm Coast, Florida

Agenda Item

Agenda Date: 10/29/2019

Department	Utility	Amount	\$ 195,000.00
Item Key		Account	# 54019090 063000 81001 # 54019090 034000 # 54029082 063000 82001
Subject RESOLUTION 2019-XX APPROVING MASTER SERVICES AGREEMENTS WITH COASTAL CABLE CONSTRUCTION AND B & B UNDERGROUND AND DRILLING, INC. FOR DIRECTIONAL BORING SERVICES.			
Background : <p>The City of Palm Coast Utility Division requires casings and piping to be installed under roadways, driveways and waterways for water and wastewater service lines, transmission lines and irrigation lines for both new installations and replacements. The pipe sizes range from 1-1/2 “ to 8” in diameter.</p> <p>The contract requires the contractor to provide vehicles, equipment, materials and experienced directional boring crew to perform the installation of casing and piping in a timely and professional manner. The contractor will adhere to the scope of work provided in the bid documents.</p> <p>In accordance with the City’s Purchasing Policy, City staff advertised and solicited bids for directional boring services on an as needed basis under bid ITB-UT-19-96. The City received four (4) bids which were responsive and responsible. The project bid overview and notice of intent to award are attached. Staff recommends City Council approving master services agreements for three (3) years with an option for two (2) annual renewals, with Coastal Cable Construction and B & B Underground and Drilling, Inc. for directional boring services.</p> <p>City staff will purchase services on an as-needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2020 Budget includes \$195,000.00 within the Utility budget to purchase these services.</p>			
Recommended Action : <p>ADOPT RESOLUTION 2019-XX APPROVING MASTER SERVICES AGREEMENTS WITH COASTAL CABLE CONSTRUCTION AND B & B UNDERGROUND AND DRILLING, INC. FOR DIRECTIONAL BORING SERVICES</p>			

RESOLUTION 2019 - ____
COASTAL CABLE CONSTRUCTION AND
B & B UNDERGROUND AND DRILLING, INC.
FOR DIRECTIONAL BORING SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA APPROVING A MASTER SERVICES AGREEMENT WITH COASTAL CABLE CONSTRUCTION AND B & B UNDERGROUND AND DRILLING, INC. FOR DIRECTIONAL BORING SERVICES.; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Coastal Cable Construction and B & B Underground and Drilling, Inc., has expressed a desire to provide services for directional boring to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires for Coastal Cable Construction and B & B Underground and Drilling, Inc., to provide directional boring services to the City of Palm Coast.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AS FOLLOWS:

SECTION 1. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of the master services agreements with Coastal Cable Construction. and B & B Underground and Drilling, Inc. to provide services for directional boring, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILLISSA HOLLAND, MAYOR

VIRGINIA SMITH, CITY CLERK

Attachments:

Exhibit "A" –Master Services Agreements- Coastal Cable Construction and B & B Underground and Drilling, Inc.

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: ITB-UT-19-96 - Directional Boring Services – Master Services Agreement

Date: 10/18/2019

Appeal Deadline: Appeals must be filed by 5:00 PM on 10/23/2019

Firm	Bid (Total of Lines A,B and C from Price Schedule)
Coastal Cable Construction Ormond Beach, FL	\$37.30
B & B Underground and Drilling, Inc. Deland, FL	\$42.00
Danella Construction Corp of Florida Cocoa, FL	\$64.50
T.B. Landmark Construction, Inc. Jacksonville, FL	\$96.00

The intent of the City of Palm Coast is to award ITB-UT-19-96 to **Costal Cable Construction and B & B Underground and Drilling, Inc.**

Cc: Contract Coordinator, Project Manager, ASED Director, Department Director, Finance Director

For questions regarding the NOIT please contact project coordinator, jkscott@palmcoastgov.com.

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaigout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



ITB-UT-19-96 - Directional Boring Services

Project Overview

Project Details	
Reference ID	ITB-UT-19-96
Project Name	Directional Boring Services
Project Owner	Jesse Scott
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	This Invitation to Bid is issued for the purpose of soliciting proposals from qualified contractors to perform directional boring services.
Open Date	Oct 02, 2019 8:00 AM EDT
Intent to Bid Due	Oct 16, 2019 2:00 PM EDT
Close Date	Oct 17, 2019 2:00 PM EDT

Awarded Suppliers	Reason	Score
B&B Underground and Drilling, Inc.		89.29 pts
Coastal Cable Construction		100 pts

Seal status



Requested Information	Unsealed on	Unsealed by
Forms 1 - 4	Oct 17, 2019 2:00 PM EDT	Kelly Downey
References	Oct 17, 2019 2:00 PM EDT	Kelly Downey
Price Schedule	Oct 17, 2019 2:00 PM EDT	Kelly Downey
Statement of Qualifications	Oct 17, 2019 2:00 PM EDT	Kelly Downey
Underground Utility Contractor's License	Oct 17, 2019 2:00 PM EDT	Kelly Downey
Equipment List (owned and leased)	Oct 17, 2019 2:00 PM EDT	Kelly Downey

Conflict of Interest

Declaration of Conflict of Interest you have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: * has direct or indirect financial interest in the award of the contract to any proponent; * is currently employed by, or is a consultant to or under contract to a proponent; * is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, * has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Peter Roussell	Oct 17, 2019 2:06 PM EDT	No



Jesse Scott	Oct 18, 2019 8:03 AM EDT	No
Mike Hughes	Oct 17, 2019 2:05 PM EDT	No
Richard Sydnor	Oct 17, 2019 2:55 PM EDT	No



Project Criteria

Criteria	Points	Description
Required Forms, References, license	Pass/Fail	Completed and submitted as requested
Price Schedule	100 pts	Entry of bid pricing and review
Equipment List	Pass/Fail	Does it meet expectations to include demonstrating ability to meet the stated needs
License	Pass/Fail	Valid to include any license covering subcontractors
Statement of Qualifications	Pass/Fail	Presented evidence on experience - minimum 5 years
References	Pass/Fail	Physically check the references and score based upon feedback received
Price schedule	Pass/Fail	Does the pricing seem reasonable?
Total	100 pts	



Scoring Summary

Active Submissions

	Total	Required Forms, References, license	Price Schedule	Equipment List	License
Supplier	/ 100 pts	Pass/Fail	/ 100 pts	Pass/Fail	Pass/Fail
Coastal Cable Construction	100 pts	Pass	100 pts (\$37.5)	Pass	Pass
B&B Underground and Drilling, Inc.	89.29 pts	Pass	89.29 pts (\$42)	Pass	Pass
Danella Construction Corp of Florida	58.14 pts	Pass	58.14 pts (\$64.5)	Pass	Pass
T B Landmark Construction, Inc.	39.06 pts	Pass	39.06 pts (\$96)	Pass	Pass



	Statement of Qualifications	References	Price schedule
Supplier	Pass/Fail	Pass/Fail	Pass/Fail
Coastal Cable Construction	Pass	Pass	Pass
B&B Underground and Drilling, Inc.	Pass	Pass	Pass
Danella Construction Corp of Florida	Pass	Pass	Fail
T B Landmark Construction, Inc.	Pass	Pass	Fail

City of Palm Coast, Florida Agenda Item

Agenda Date: 10/29/19

Department	Public Works	Amount	550,000.00
Item Key	7271	Account	65010071-052002
Subject	RESOLUTION 2019-XX APPROVING PIGGYBACKING THE STATE OF FLORIDA CONTRACT WITH PETROLEUM TRADERS CORPORATION TO PURCHASE BULK FUEL, GASOLINE AND DIESEL PRODUCTS		
Background : <p>The Public Works Department is responsible for operating and maintaining the citywide fuel facilities, including the purchase of fuel for use in all City vehicles and equipment.</p> <p>The State of Florida has renewed its contract with Petroleum Traders Corporation. City staff is recommending that City Council approve piggybacking the State of Florida contract with Petroleum Traders Corporation to purchase bulk fuel, gasoline and diesel products.</p> <p>Piggybacking existing competitively bid contracts is advantageous since the pricing is generally more competitive than the price we would obtain on our own. Furthermore, the City does not have to incur the expense and delay of soliciting our own bid.</p> <p>The underlying contract is a price agreement. City staff will purchase fuel products on an as needed basis at the contracted rates using budgeted funds appropriated by City Council. The Fiscal Year 2020 Fleet Budget includes available funding in the amount of \$763,365.00 for various fuel related purchases. City staff estimates that the City will expend approximately \$550,000 annually under this contract with Petroleum Traders Corporation.</p>			
Recommended Action : <p>ADOPT RESOLUTION 2019-XX APPROVING PIGGYBACKING THE STATE OF FLORIDA CONTRACT WITH PETROLEUM TRADERS CORPORATION TO PURCHASE BULK FUEL, GASOLINE AND DIESEL PRODUCTS</p>			

RESOLUTION 2019-____
PIGGYBACKING STATE OF FLORIDA
BULK FUEL, GASOLINE AND DIESEL PRODUCTS
PETROLEUM TRADERS CORPORATION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING THE STATE OF FLORIDA CONTRACT #15100000-19-1 WITH PETROLEUM TRADERS CORPORATION, FOR BULK FUEL, GASOLINE AND DIESEL PRODUCTS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Petroleum Traders Corporation, has expressed a desire to provide bulk fuel, gasoline and diesel products to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to purchase the above referenced products from Petroleum Traders Corporation.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF CONTRACT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the piggyback contract #15100000-19-1 with Petroleum Traders Corporation for the purchase of bulk fuel, gasoline and diesel products, which is attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 5th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Piggyback State of Florida Contract #15100000-19-1 with Petroleum Traders Corporation

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



CONTRACT EXECUTIVE OVERVIEW (Non-Construction)

Vendor Name Petroleum Traders Corporation

Project Name: Bulk Fuel, Gasoline and Diesel

Bid/Reference # 15100000-19-1

Contract Type: Piggyback

Contract Value \$ 550000.00

Resolution # _____

City Council Approval Date: _____

Standard Contract Template (Y/N): N/A - Piggyback

If No, then Reviewed by City Attorney: N/A - Piggyback

Length of Contract: 06/30/2022

Renewable (Y/N): Y

If Yes, # and length of renewals: 1 year

City's Project Manager Roger Lachance

Brief Description/Purpose:

To utilize the pricing on the State of Florida contract with Petroleum Traders Coproation to
purchase bulk fuel, gasoline and diesel.

Approvals:

Responsible Dept. Director _____

Date: _____

City Finance _____

Date: _____

City Attorney _____

Date: _____

ASED Director _____

Date: _____

City Manager _____

Date: _____

Vendor Email



Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

October 1, 2019

Gayle Newton
Contract Sales Manager
Petroleum Traders Corporation
P. O. Box 2357
Fort Wayne, IN 46801

**RE: Engagement Letter Authorizing Piggyback
Bulk Fuel, Gasoline and Diesel**

Contract Name

15100000-19-1

Contract Reference

Dear Gayle Newton,

The City of Palm Coast, Florida requests permission to utilize your company's above referenced contract in accordance with the approved pricing, terms and conditions. If agreed, please indicate approval by electronically signing below.

All invoices should be sent to the Accounts Payable Department, City of Palm Coast, 160 Lake Avenue, Palm Coast, Florida 32164, or to ap@palmcoastgov.com.
Likewise, legal notices should be sent to the attention of the City Manager at the same address.

If you should have any questions please don't hesitate to contact me at the email address below.

Sincerely,

DocuSigned by:

Kelly Little-Downey

Kelly Little-Downey

Procurement Coordinator

City of Palm Coast

Klittle-downey@palmcoastgov.com



Engagement Letter Authorizing Piggyback

Bulk Fuel, Gasoline and Diesel

Contract Name

15100000-19-1

Contract Reference

In Process

CITY OF PALM COAST

Petroleum Traders Corporation
(Company)

Signature

Print Name

Date

DocuSigned by:

Gayle Newton

633B8C05349C486...

Signature

Gayle Newton

Print Name

Oct 3, 2019 | 5:42 AM PDT

Date



Division of State Purchasing

AMENDMENT NO.: 1
Bulk Fuel, Gasoline, and Diesel
State Term Contract No. 15100000-19-1

This Amendment ("Amendment") effective on the date the document is signed by all parties, to the Bulk Fuel, Gasoline, and Diesel Contract No. 15100000-19-1 ("Contract"), between the State of Florida, Department of Management Services ("Department") and Petroleum Traders Corporation ("Contractor"), collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract unless otherwise defined herein.

WHEREAS, the Parties agreed that the Contract may be amended by mutual agreement and in writing as provided in Section IV, "Contract", of the Contract.

WHEREAS, the Department seeks to remove the emergency fuel plans from the Contract to accommodate the needs of the Division of Emergency Management.

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

I. Contract Amendment. Exhibit A, Scope of Work, is hereby amended to delete Section F, Emergency Fuel Plan, in its entirety from this Contract.

II. Conflict. To the extent any of the terms of this Amendment conflict with the terms of the Contract, the terms of this Amendment shall control.

III. Warranty of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

IV. Effect. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect. This Amendment sets forth the entire understanding between the parties with regard to this subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives.

State of Florida:
Department of Management Services

Contractor:
Petroleum Traders Corporation

By: _____

By: _____

Name: David Clark

Name: Vicki L. Himes

Title: Chief of Staff

Title: Vice President

Date: _____

Date: _____

Department of
**MANAGEMENT
SERVICES**

Division of State Purchasing



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Bulk Fuel, Gasoline, and Diesel
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IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives.

State of Florida:
Department of Management Services

By: 

Name: David Clark

Title: Chief of Staff

Date: 7/31/19

Contractor:
Petroleum Traders Corporation

By: 

Name: Vicki L. Himes

Title: Vice President

Date: 7-19-19



**State Term Contract
No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida and Petroleum Traders Corporation (Contractor), collectively referred to herein as the "Parties."

Accordingly, the Parties agree as follows:

I. Contract Award

The Contractor has been awarded the following fuel groups and fuel types for the Northern, Western, and Central regions:

Diesel Fuel, Grade No. 2-D Ultra Low Sulfur- Transport and Non-Transport
Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur- Transport and Non-Transport
Gasoline E10, Unleaded 87 Octane- Transport and Non-Transport

II. Initial Contract Term.

The Initial Contract Term shall be for three years. The Initial Contract Term shall begin on July 1, 2019. The Contract shall expire on June 30, 2022, unless terminated earlier in accordance with the Special Contract Conditions.

III. Renewal Term.

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term, pursuant to the incorporated Special Contract Conditions.

IV. Contract.

As used in this document, "Contract" (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

All Attachments listed below are incorporated in their entirety into, and form part of this Contract. The Contract Attachments shall have priority in the order listed:

- a) Exhibit A: Scope of Work, Attachment A
- b) Exhibit B: Markup Sheet
- c) Exhibit C: Special Contract Conditions, Attachment C
- d) Exhibit D: Addenda to Solicitation
- e) Exhibit E: ITB and other ITB Attachments

**State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

V. Amendment to Exhibit E (ITB)

ITB Section 2.1 Definitions; is hereby amended to replace two definitions for Transport and Non transport delivery to the definitions listed below:

Transport Delivery - A delivery by a transport truck or other means with a minimum delivery of 6,000 gallons and a maximum delivery of; 8,500 gallons for gasoline, 7,500 gallons for diesel, and 7,500 gallons for a combination load of gasoline and diesel.

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of; 5,999 gallons for gasoline, 5,999 gallons for diesel, and 5,999 gallons for a combination load of gasoline and diesel.

VI. Contract Management.

Department's Contract Manager:

Frank Miller
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8855
Email: Frank.Miller2@dms.myflorida.com

Contractor's Contract Manager:

Gayle Newton
Petroleum Traders Corporation.
Po Box 2357
Fort Wayne, IN 46801
Telephone: (888) 637-7661
Email: gnewton@petroleumtraders.com

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

**PETROLEUM TRADERS
CORPORATION**

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**

Patrick Gillespie, Deputy Secretary

Date:

Date:

State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel

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Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of; 5,999 gallons for gasoline, 5,999 gallons for diesel, and 5,999 gallons for a combination load of gasoline and diesel.

VI. Contract Management.

Department's Contract Manager:

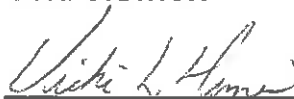
Frank Miller
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8855
Email: Frank.Miller2@dms.myflorida.com

Contractor's Contract Manager:

Gayle Newton
Petroleum Traders Corporation.
Po Box 2357
Fort Wayne, IN 46801
Telephone: (888) 637-7661
Email: gnewton@petroleumtraders.com

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

**PETROLEUM TRADERS
CORPORATION**



Vicki L. Himes, Vice President

06/14/2019

Date:

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**


Patrick Gillespie, Deputy Secretary
David Clark, Chief of Staff

Date:

6/24/19

Exhibit A

Scope of Work

A. General Statement

1. Purpose

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Biodiesel. Customers for this contract include all state agencies and eligible users. (It is anticipated that Customers will use approximately 10,000,000 gallons annually under the resulting Contract, if any).

2. Commodity Code List

UNSPSC	Commodity Description
15101505	Diesel fuel
15101506	Gasoline or Petrol
15101513	Diesel fuel off road
15101801	Biodiesel

B. Definitions

- 1. Back Haul-** Return of unused fuel.
- 2. Contractor -** The successful bidder/Vendor who is awarded the resultant contract under this solicitation. Contractor is also known as the "Shipper".
- 3. Contract Manager -** Person designated by the Department of Management Services (the Department) to be responsible for managing the performance of a contract.
- 4. Customer -** An ordering entity including state agencies and eligible users, as defined in Rule 60A-1.001, Florida Administrative Code (F.A.C.).
- 5. Eligible User -** A governmental entity defined in Rule 60A-1.001, F.A.C.
- 6. Emergency Delivery-** When a delivery is required to help immediate risk to health, life, or property.
- 7. Freight Charge-** The fee is applied to all shipments and is set by local authorities which means this fee may apply to both import or export shipments.
- 8. Pump Off-** Using a pump to pull the fuel from the truck/trailer and pushes the fuel to its destination.
- 9. Top Off-** To bring fuel to the maximum tank level of 1,000 gallons or less.

C. Commodity Specifications

1. **Biodiesel Blend:** Blend of grade no. 2-D ultra-low sulfur diesel and up to 20% biodiesel, for use in over the road diesel engine, meeting the American Society for Testing and Materials (A.S.T.M.) specification D7467 for biodiesel blends (6% – 20%). The biodiesel component shall consist of mono-alkyl esters of long chain fatty acids derived from new and used vegetable oils, designated B100, B99.9, or B99, meeting the A.S.T.M. specification D6751 and be certified under the BQ9000 quality program. The diesel component (grade no. 2-D ultra-low sulfur diesel) and any blends with less than 6% biodiesel shall meet A.S.T.M. specification D975. The final product shall comply with the standards in Rule 5J-21.001, F.A.C. **The Contractor must deliver any blend requested by the Customer.**
2. **Diesel Fuel, Grade No. 2-D Ultra Low Sulfur:** Grade no. 2-D (.0015 mass Percentage sulfur, 40 cetane min.), for use in over the road diesel engine, per A.S.T.M. specification D975, complying with Rule 5J-21.001, F.A.C.
3. **Gasoline E10, Unleaded 87 Octane:** The product shall comply with the standards in Rule 5J-21.001, F.A.C.
4. **Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur:** for use in off-road diesel engine, minimum cetane number of 40 using A.S.T.M. D613, A.S.T.M specification D975, Grade # 2 S15. The product shall comply with the standards in Rule 5J-21.001, F.A.C.

Upon Customer request, Contractor must provide all certificates concerning product quality of all commodities listed in Section C (1-4) inclusive in this Scope of Work.

D. Pricing Elements for Purchase of Fuels

1. Cost of Fuel

Prices will be calculated for each fuel type using the following information:

1.1 Biodiesel Blend

- 1.1.1 Data Transmission Network (DTN) FastRacks Average Price for Ultra Low No. 2. The daily price will be used to calculate the diesel portion for Biodiesel.
- 1.1.2 The Wall Street Journal's published Monday closing price for soybean oil, as printed in the Tuesday edition under "Fats and Oils" in the "Cash Prices" column. This weekly price will be used to calculate the bio portion of the Biodiesel. This method will be used unless vendor(s) can show a better way of getting the price weekly. If no Monday price is published, then the next available published price will apply (Tuesday, Wednesday, etc.).
- 1.1.3 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.1.4 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

Sample Calculations:

B20 wholesale price = 0.80 times the price for ultra-low sulfur no. 2 diesel plus 0.20 times the price for soybean oil.

B10 wholesale price = 0.90 times the price for ultra-low sulfur no. 2 diesel plus 0.10 times the price for soybean oil.

B5 wholesale price = 0.95 times the price for ultra-low sulfur no. 2 diesel plus 0.05 times the price for soybean oil.

The Contractor is prohibited from negotiating or billing in a manner that exceeds the stated prices included in the Contract. The Contractor agrees that the price charged to the Customer shall be subject to audit, and the Contractor shall make all records supporting the invoiced prices available for inspection, upon written request by the Customer.

1.2 Diesel Fuel, Grade No. 2-D Ultra Low Sulfur

- 1.2.1 DTN FastRacks Average Price for Ultra Low No. 2.
- 1.2.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.2.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.3 Gasoline E10, Unleaded 87 Octane

- 1.3.1 DTN FastRacks Average Price for Gasoline E-10 10% Ethanol.
- 1.3.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.3.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.4 Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur

- 1.4.1 DTN FastRacks Average Price for Ultra Low Red No. 2.
- 1.4.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.4.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

The DTN FastRacks Average Price used above will be that of the closest appropriate terminal, on the date of delivery to the Customer, regardless of when or where the Contractor obtained fuel. The Contractor must subscribe to the DTN FastRacks Averages by calling DTN's Sales Department at 1-800-779-5775.

The following terminals are used to refer to the DTN FastRacks Average Prices:

- Pensacola
- Panama City
- Jacksonville

- Orlando
- Tampa
- Miami
- Bainbridge, GA

2. Fuel Fees, Taxes, and Other Costs

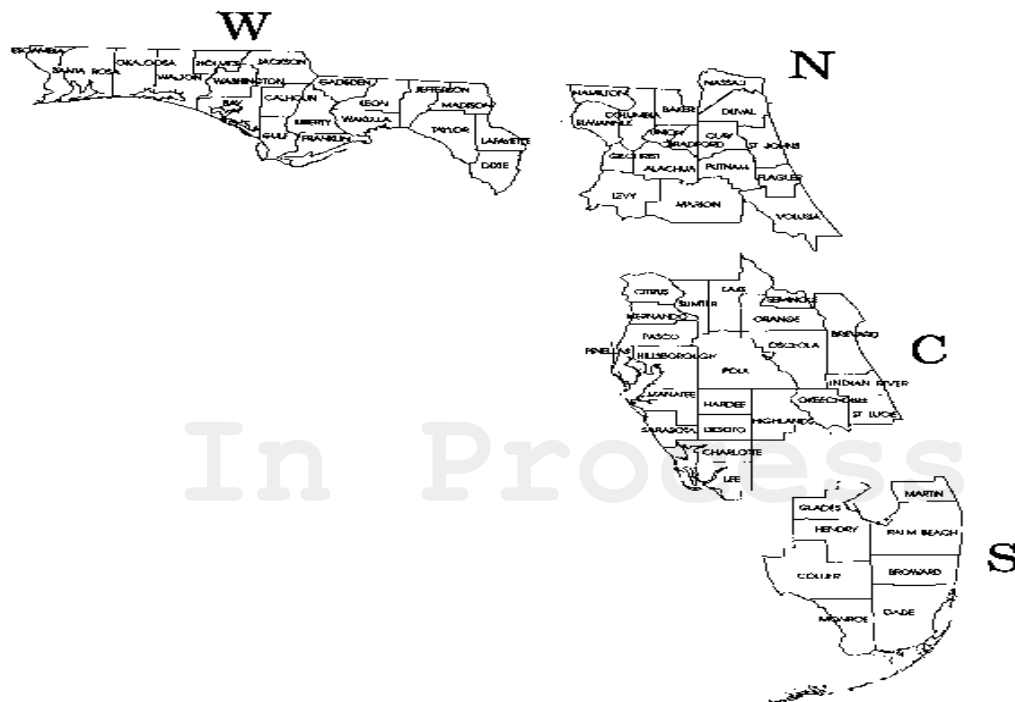
The Contractor may assess the following charges as determined by the price sheet for the county in which delivery of Fuel is made:

- 2.1. Delivery charges are allowed.
- 2.2. Freight charges will apply on all Transport Deliveries.
- 2.3. Pump off charge for Transport Delivery. This may be charged more than once if Transport Delivery truck is required to relocate to deliver to additional tanks.
- 2.4. Excessive delay charge if Contractor should wait more than 30 minutes to begin Fuel delivery.
- 2.5. Back haul charge if Customer orders more than tanks can hold.
- 2.6. Top off charge.
- 2.7. Tank maintenance, if customer and vendor agree.
- 2.8. Other fees were permitted by paragraph 215.422(3)(b), Florida Statutes.

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E. Delivery to Customers

Map of Four Geographic Regions for Delivery to Customers



Identification of Counties within Four Geographic Regions

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Bay	Alachua	Brevard	Broward
Calhoun	Baker	Charlotte	Collier
Dixie	Bradford	Citrus	Glades
Escambia	Clay	Desoto	Hendry
Franklin	Columbia	Hardee	Martin
Gadsden	Duval	Hernando	Miami-Dade
Gulf	Flagler	Highlands	Monroe
Holmes	Gilchrist	Hillsborough	Palm Beach
Jackson	Hamilton	Indian River	
Jefferson	Levy	Lake	
Lafayette	Marion	Lee	
Leon	Nassau	Manatee	
Liberty	Putnam	Okeechobee	

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Madison	St. Johns	Orange	
Okaloosa	Suwannee	Osceola	
Santa Rosa	Union	Pasco	
Taylor	Volusia	Pinellas	
Wakulla		Polk	
Walton		Sarasota	
Washington		Seminole	
		St. Lucie	
		Sumter	

NOTE: Gallons listed below may be converted to liters.

1. Normal delivery on this Contract shall be from 6,000 to 8,500 gallons for a Delivery of gasoline; 6,000 to 7,500 gallons for a Delivery of diesel; and 7,500 gallons for a combination load Transport Delivery of gasoline and diesel.
2. Delivery options on the contract for less than the normal delivery can be made via a tank wagon, LPG trucks, or other means to receive less than 6,000 gallons.
3. In the event of an emergency, gas and/or diesel deliveries/top offs can be made by a tank wagon or other available transportation for gas or diesel deliveries less than the normal delivery load.
4. Delivery shall be made available to all state agencies and their locations.

Imperial measurements appearing are not intended to preclude bids for commodities with metric measurements.

5. Normal delivery of fuel will be delivered to the Customer's tank(s) within 48 hours after telephone notification is received unless specified otherwise by the Customer. For new accounts, the Contractor will be allowed additional time to enter all required account information into their ordering/billing system to establish the new account. This time will be agreed upon by the Customer and the Contractor. The State prefers that vehicles equipped with meters make delivery. If non-metered vehicles are used, the driver shall leave a metered loading report from the terminal with the Customer. If temperature corrected billing is used, the loading report shall give all pertinent information. Customer may be subject to a service charge if request is for same day delivery.
6. Before unloading of Fuel begins, Customer personnel and Contractor personnel shall measure the Customer's tank(s) to receive Fuel and shall again measure the tank(s) after delivery. Customer may be subject to a back-haul charge if the Customer orders more Fuel than the Customer's tank(s) can hold upon delivery and a portion of the Fuel ordered has to be returned.

F. Emergency Fuel Plan

Within thirty days of contract signing, the Contractor and the State shall jointly develop an Emergency Fuel Plan (Plan). The emergency purchases under the Plan shall include the use of

equipment and tools, and all services and responsibilities prescribed or implied which are necessary for the complete performance by the Contractor of its obligations under the Plan. This Plan shall include but not be limited to:

- Commodities and services available to Customers during emergencies
- An assessment of risks
- Operational assignments (Who does what, when and how)
- Procedures for Emergency notification (How do we tell people there's a problem?)
- Procedures for activation in the event of an emergency to protect and/or recover critical assets and functions
- Procedures for Plan testing
- Procedures for an annual review, updating, altering and re-writing that results in a document that is fully functional and operational
- The plan must be able to work with the State's Fuel Card program

G. Invoices

1. The Contractor shall submit timely invoices to the Customer.
2. At a minimum the invoices are to provide the following information:
 - 2.1. Contractor's name, contract number, actual date of delivery, location of delivery, fuel manufacturer, and fuel quantity delivered;
 - 2.2. DTN FastRacks Average Price based on the actual delivery date and named closest terminal used for price;
 - 2.3. Exempted taxes, fees, credits, markup, and other fees consisting of freight, pump-off, excessive delay, back-haul, top-off, tank maintenance pump off fee;
 - 2.4. Adjustments due to unforeseen circumstances including but not limited to erroneous orders, fuel spills, delivery of incorrect fuel, and cross-fueling; and
 - 2.5. Total invoice price.
3. To encourage transparency, all line item costs on all invoices shall include a description of each cost sufficient for a Customer to understand and audit.

H. Punch-out Catalog and Electronic Invoicing

The Contractor will be required to provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line

items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier.

At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.

I. Contract Reporting

The Contractor shall report information on orders received from state agencies and eligible users associated with this contract. The Contractor shall supply to the Department all the data, calculations, and documents used in computing all costs associated with the supply and delivery of Fuel.

No favorable action will be considered for any contractor who has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation, to include fees / monies that is required under this Contract.

The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Dates
MFMP Transaction Report	Calendar month	15th calendar day of the month following the receipt of payment for the vendor's good or services.
Contract Quarterly Sales Report	State's Fiscal Quarter	10 calendar days after close of the period
Savings / Price Reductions	Annual	10 business days after each action that adjusts prices
Diversity Report (submitted to the Customer)	State Fiscal Year	10 business days after close of the period
Preferred Pricing Affidavit	Annual	Contract anniversary date

J. MFMP Transaction Fee Report

The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due 15 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendor on the MFMP website: MFMP Transaction Fee and Reporting. Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk by email at feeprocessing@myfloridamarketplace.com or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. ET.

K. Quarterly Sales Report

The Contractor agrees to submit a Quarterly Sales Report to the Department's Contract Manager within 10 calendar days after the close of each State Fiscal quarter (September 30, December 31, March 31, and June 30).

Quarterly Reporting periods should coincide with the contract term and should begin the quarter following contract execution. Reports must be submitted in MS Excel format. The report will include all sales (orders) from state agencies and eligible users received (associated with this contract) during the period. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated for convenience or the Department may choose to not renew the Contract.

The Contractor shall report to each Customer (ordering entity), spend with certified and other minority business enterprises. These reports shall include the period covered, the name, minority code and Federal Employer Identification Number of each minority business utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority business on behalf of each purchasing agency ordering under the terms of this Contract.

In addition, the Department may require additional Contract sales information such as copies of purchase orders, or ad hoc sales reports. The Contractor shall submit these specific ad hoc requests within the specified amount of time as requested by the Department.

The Contractor is required to submit ad hoc reports within the specified amount of time as requested by the Department.

L. Business Review Meetings

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables
- Review of the Contractor's performance
- Review of minimum required reports
- Addressing of any elevated Customer issues
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies

M. Financial and Other Consequences

The following financial consequences will apply for nonperformance of the contract by a Contractor. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform/comply with provisions of the Contract. These consequences for non-performance are not to be considered penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in US Dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every quarter thereafter.

Performance Metrics	Description	Frequency	Financial Consequences Trigger for Non-Performance Per Day Late
Submission of complete and accurate Contract Quarterly Sales Report	Submit Quarterly Sales Report 10 calendar days after close of the period	Each quarter	\$250
Submission of complete and accurate Contract Monthly Transaction Fee Report	Submit Monthly Transaction Fee Report 15 calendar days after close of the period	Each month	\$100

N. Service Level Agreement (SLA) Performance

State agencies and eligible users may add SLA requirements and additional financial consequences in their statements of work for failing to meet performance requirements within any negotiated SLA or purchase order.

Exhibit C
Special Contract Conditions

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In accordance with Rule 60A-1.002(5), F.A.C., Form PUR 1000 is included herein by reference and is superseded in its entirety by these Special Contract Conditions.

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SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes, (F.S.) and rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of suspension. Examples of a reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with any active or new purchase orders. Within ninety (90) calendar days, or any longer period agreed to by the Contractor, the Department or Customer will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

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If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may: (a) immediately terminate the Contract; (b) notify the Contractor of the noncompliance or default and require correction within a specified time, otherwise the Contract will terminate at the end of such time; or (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

(a) Preferred Pricing. Consistent with the goals of section 216.0113, F.S., Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in pricing over the course of the Contract period. To that end, the pricing indicated in this Contract is a maximum guarantee under the terms of this clause. Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those which are similar in size, scope, and terms. Contractor must annually submit an affidavit from an authorized representative attesting that the Contract is in compliance with this clause.

(b) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract. If applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. The purchase order period of performance survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than twelve (12) months.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

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Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior agreements between the Parties.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested; reputable air courier service; email; personal delivery; or as otherwise identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be provided in a separate writing to the Contractor upon Contract signing in the following format:

Jane Doe
Address

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Telephone #
Email

In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be provided in a separate writing to the Department upon Contract signing in the following format:

Jane Doe
<Insert Contractor name>
<Insert Contractor's physical address>
Telephone: (XXX) 555-XXXX
Email: jane.doe@business.gmail.com

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity Reporting.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Department purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

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

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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.

Additional information about RESPECT and the commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

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, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; 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.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all

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privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

5.5 Scrutinized Companies—Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website, whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

5.7 Inspection.

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Section 215.422, F.S., provides that agencies have five (5) working days, unless the contract specifies otherwise, to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also limited according to section 215.422, F.S.

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the Department and are not entitled to State of Florida benefits. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

6.4 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor.

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Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

6.7 Time is of the Essence.

Time is of the essence regarding each and every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Agencies wishing to make purchases under this Contract are required to follow the requirements of section 287.042(16) or 287.057(3) (b), F.S., and rule 60A-1.045, F.A.C. These provisions require the Department to determine that the requesting agency's use of the Contract is cost-effective and in the best interest of the State.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, government entities may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Non-Customer purchases are independent of the Contract between the Department and the Contractor. The Department is not a party to any transaction between the Contractor and any purchaser.

SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION

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7.1 Workers' Compensation Insurance.

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Department for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal & advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from the services and/or operations completed under the Contract, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include the State of Florida as an additional named insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor must submit via email, to the Department's contract manager, insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department and provide Department notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal.

7.3 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Department, the Customer, and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Department or Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

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SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY.

8.1 Public Records.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with the Contract.

Pursuant to section 119.0701(2) (a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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 records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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8.2 Protection of Trade Secrets or Confidential Information.

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department or the Customer will be owned by the State of Florida at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

SECTION 9. DATA SECURITY AND SERVICES.

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9.1 Duty to Provide Secure Data.

The Contractor will maintain the security of State of Florida data including, but not limited to, a secure area around any displayed visible data. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

9.2 Warranty of Security.

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Customer and will entitle the Customer to a credit as provided in the Contract documents. This credit is intended only to cover the Customer's internal staffing and administrative costs as well as the diminished value of services provided under the Contract and will not preclude the Customer from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Customer to recover any damages arising from a breach of this section and constitutes an event of default.

The Contractor must notify the Department and the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any data is breached, any unauthorized access of data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of data affected. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

9.3 Remedial Measures.

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's and the Customer's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30)-minute notice will be given to allow Department

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personnel to be available for the call. If the designated time is not practical for the Customer, an alternate time for the call will be scheduled. Contractor must share all available information on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department and the Customer with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's and the Customer's Contract Manager and in all events, within one business day.

9.4 Indemnification (Breach of Warranty of Security).

The Contractor agrees to defend, indemnify, and hold harmless the Department, the Customer, and the State of Florida, its officers, directors, and employees for any claims, suits, or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two-year period of time following the breach.

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9.5 Annual Certification.

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

10.3 Communications.

Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements which concern the Contract or its subject matter, disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract, or use any statement attributable to the Department or its employees. Public statements include press releases, publicity

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releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a time-frame specified by the Department. The Contractor must provide the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies.

11.3 Liquidated Damages.

The Contractor will promptly notify the Department or the Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

Exhibit C

Special Contract Conditions

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor'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 will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the 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 the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the

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Contractor's contracts relating to this Contract. The State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department may require the Contractor and its employees, agents, representatives, and subcontractors to provide fingerprints and be subject to such background checks as directed by the Department. The cost of the background checks will be borne by the Contractor. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. The Contractor will ensure that all background screening will be refreshed upon the request of the Department for each person during the term of the Contract.

13.2 E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any

Exhibit C

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jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. INFORMATION TECHNOLOGY.

The following applies to all contracts for information technology commodities and contractual services. "Information technology" is defined in section 287.012(15), F.S., to have the same meaning as provided in section 282.0041, F.S.

14.1 Limitation of Liability.

For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$250,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the

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Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to backup data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due to the Contractor under any contract with the State.

14.2 Information Technology Standards.

Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the agency in furtherance of its efforts to comply with AST standards, established in Title 74, F.A.C., as applicable.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

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Exhibit D

ADDENDUM NO. 1

Questions and Answers ITB Amendments

Contained herein are the answers to the questions submitted to the Department of Management Services (Department). The Department hereby amends ITB No. 16-15100000-W, as noted within this Addendum. In the event of a conflict between previously released information and the information contained herein, the information herein shall control. The information included in this addendum is now made part of this solicitation.

FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), FLORIDA STATUTES, OR FAILURE TO POST THE BOND OR OTHER SECURITY REQUIRED BY LAW WITHIN THE TIME ALLOWED FOR FILING A BOND SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES.

Any protest must be timely filed with the Department of Management Services' Agency Clerk.

Please Note: This Addendum No. 1 does not need to be returned with the response.

The Department has received the following questions from the vendor community through the MFMP Sourcing Tool and answers are provided in the following table:

#	QUESTION	ANSWER
1.	Could you please provide SOME idea of entities that use the contract, locations, tank sizes, ordering volume, etc?	The Department has not previously collected detailed sales information by tank size, volume, fuel type, or location, so we cannot provide detailed historic measures. However, the estimated annual spend can be located in section 1.1 of the ITB.
2.	How often are 500 gallon tank wagon deliveries needed versus 6000 gallon?	The requested information is not in the possession of the Department.
3.	Is freight priced separately or included in the bid differential?	Freight is priced separately. Please refer to Revised Attachment J, Instructions tab, which has been uploaded in MFMP Sourcing, for additional information.
4.	Similarly, what is the Delivery Charge (per gallon) and the Freight Charge (flat fee, not to exceed)? How do they differ? Is this a freight rate per location?	Freight Charge is the cost associated with the transportation of goods from one place to another. This can include, but is not limited to, packaging and insurance cost. Delivery Charge is what the Bidder is charging to deliver to the customer and may include, but is not limited to, handling and inside delivery. The freight rate is a not to exceed rate and is applicable to

		all locations within a given region, as identified in the Revised Attachment J.
5.	What is the Top Off charge? Is this a tank wagon delivery to a transport tank that is already full?	A Top Off charge is a not to exceed rate that the Bidder provides in Revised Attachment J. For the definition of Top Off, please refer to Attachment A, section B.
6.	Do we have to bid transport AND tank wagon?	No, please refer to Revised Attachment J, Instructions tab for this information.
7.	Is a punch-out catalog required? I noticed there is no fuel supplier listed on the punch-out catalog vendor list.	No, punch-out catalogs are optional. Please see the modification to Attachment A, section H, incorporated below.
8.	Must all fuel invoices go through the Ariba Network? There is no fuel vendor listed on the MFMP vendor list.	No. Please refer to Attachment A, section H of the ITB for additional information.
9.	What is the Transaction Fee? Is it .7 of one percent of the entire price of the invoice?	Currently the fee is .7% of the total contract sales per month. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by Rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law.
10.	Who determines what the nearest terminal is to a delivery location to be able to use the correct DTN FastRack?	A successful Bidder shall choose the closest terminal in physical distance to the delivery location.
11.	Can you please provide a spreadsheet of all tanks with sizes, locations, annual usage, and average load?	Please refer to the answer to question 1.
12.	What are the payment terms?	Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices.
13.	When will the bid go from preview mode to open mode with the ability to join?	Please refer to Attachment D and the Timeline of Events in the ITB for this information.
14.	Can you please provide a list of all the tank physical addresses, tank sizes, average load size, and estimated annual usage along with product type?	Please refer to the answer to question 1.
15.	Can we use 10am OPIS report for Tampa and Port Everglades?	No. Please refer to section D in Attachment A, Scope of work.

16.	Is the discount sheet mandatory?	Revised Attachment J is a required document. Please refer to section 7 of the ITB.
17.	How do we submit the contract, online?	Please refer to Attachment D, Special Instructions to Bidders for instructions on uploading documents in MFMP Sourcing. If you need additional assistance with using MFMP Sourcing, please contact the MFMP Customer Service Desk at VendorHelp@myfloridamarketplace.com or (866) 352-3776.
18.	Can the freight increase based on the distance from the port?	Freight charge is a not to exceed flat rate. Please refer to Revised Attachment J for further instructions.
19.	What are State of Florida's payment terms. Are Net 10 payment terms acceptable?	It is unclear what "Net 10 payment terms" means. Please refer to the answer to question 12.
20.	Are the previous bids available to review?	Copies of the current contract/vendor agreements can be located at the following link .
21.	<p>Please provide the estimated annual volumes for each product in the ITB.</p> <ol style="list-style-type: none"> 1. How much Ultra Low Sulfur Diesel number 2 2. How much Ultra Low Sulfur Diesel Red Dye 3. How much Biodiesel blend 4. How much gasoline 	Please refer to the answer to question 1.
22.	<p>Please provide the following information per location and per fuel type:</p> <ol style="list-style-type: none"> 1 - What volumes will be required per lift? 2 - What is the volume required for the life of the contract? 3 - Where is the fuel being delivered to? 4 - How frequent are the deliveries? 	Please refer to the answer to question 1.
23.	When is the first board meeting after the opening?	The Department does not have board meetings, nor are there any meetings after the opening. Please refer to the Timeline of Events.
24.	Will decision be made before or at the board meeting?	Please refer to the answer to question 23.
25.	Attachment C – 3.7 – Transaction Fees... How much is the transaction fee? Does this need to be accounted for in the	Please refer to the answer to question 9. The fee cannot be billed as a separate line item on invoices.

	vendor pricing or can it be billed as a separate line item on invoices?	
26.	Please explain how the Delivery Charge and Freight charges are to be handled. With a bid submission by region, the actual delivery and freight rates can vary greatly depending on site distance from the terminals. Under the current contract, freight charges are passed directly to the customer.	Please refer to the answer to question 4.
27.	With the bid submission by region as opposed to by county, the freight/delivery rates can vary greatly, as can the markups depending on which terminal is closest to each county. Can the bid be changed to be done by county to allow more accurate individual pricing?	No, you must bid by region as provided in Revised Attachment J.
28.	If we are unable to do a Punch-Out Catalog, will we still be considered for an award?	Please refer to the answer to question 7.
29.	Main solicitation Page 7 of 17 lists Transport delivery as minimum of 8000 gallons of gas, 7200 gallons of diesel, and 7200 gallons as a gas/diesel split. Attachment 'A' page 6 of 10 lists normal deliveries as 6000-8500 for gas, 6000-7500 for diesel, and 7500 gallons for gas/diesel splits. Attachment 'J' lists 8000-7500 (should be 8500?) for gas, and 7200-7500 for diesels (more in line with solicitation page 7). Which is accurate?	Please refer to Revised Attachment J.
30.	The list of required documents on the main solicitation page 17 of 17 does not match what the online submission currently lists. Online also indicates Attachments F and K are also required, and Attachment I (if applicable) is required. Which is accurate for submission?	Please refer to the Revised Attachment E that has been uploaded in MFMP Sourcing.
31.	Do you consider common carriers as subcontractors? If so, how should we go about getting written approval from the State to use the various carriers throughout the state? Also, as we will not know which carrier's we will need until we know specific site information, will we have ample notification of sites to allow time to get the state's approval?	Yes, however the Department does not require written approval when using common carriers to deliver the commodities associated with this ITB.
32.	Could you provide physical addresses for delivery locations?	Please refer to the answer to question 2.
33.	Could you provide volume by product per delivery locations?	Please refer to the answer to question 2.
34.	What are the average load sizes per location?	Please refer to the answer to question 2.

35.	What is the volume of each product?	Please refer to the answer to question 1.
36.	Is the Fuel Surcharge supposed to be included in the Freight Rate?	All allowable charges are shown in Revised Attachment J.
37.	What is the fee for the MFMP Transaction fees? Is it a per gallon rate, or %? Please provide number.	Please refer to Question 9.
38.	What are the sizes of tanks at size?	Please refer to the answer to question 2.
39.	Are tanks above or underground?	Please refer to the answer to question 2.
40.	Will any sites have special instructions for deliveries?	Please refer to the answer to question 2.
41.	Is the FSC to be included in the freight rate?	The question is unclear.
42.	When is actual bid due, I notice on the site it stated time remaining in preview 12 days?	Please refer to the Solicitation's Timeline of Events.

In Process

The following requirements supplement or replace those found in the ITB. The variations between the new and the old requirements are highlighted in yellow.

1. Section H of Attachment A, Scope of work, is hereby replaced in its entirety as follows:

H. Punch-out Catalog and Electronic Invoicing

The Contractor ~~will be required to~~ **may** provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier. At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.

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FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

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Exhibit E

The State of Florida

Department of Management Services

Invitation to Bid (ITB) No: 16-15100000-W

Bulk Fuel, Gasoline, and Diesel

Stephanie Wyland, Procurement Officer

4050 Esplanade Way, Suite 360

Tallahassee, FL 32399

850-488-1985

Stephanie.Wyland@dms.myflorida.com

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes (F.S.), or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, F.S. Any protest must be timely filed with the Department of Management Services' Agency Clerk listed at:

http://www.dms.myflorida.com/agency_administration/general_counsel

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Timeline of Events

The table below contains the timeline of events for this solicitation. It is the responsibility of the Bidder to check for any changes. The dates and times within the Timeline of Events may be subject to change. All changes to the Timeline of Events will occur through an addendum to the solicitation and will be noticed on the [Vendor Bid System \(VBS\)](#).

Bidders shall not rely on the MyFloridaMarketPlace sourcing time clock. It is not the official submission date and time deadline. The official solicitation closing time and deadlines are reflected in the Timeline of Events listed below.

Event	Time (ET)	Date
ITB posted on the Vendor Bid System (VBS) and posted in MFMP Sourcing		April 2, 2019
Deadline to submit questions within MFMP Sourcing Messaging Tab	10:00 A.M.	April 18, 2019
Anticipated posting of answers to Bidders' questions to the solicitation		April 30, 2019
Deadline to submit bids and all required documentation	10:00 A.M.	May 14, 2019
Public Opening 4050 Esplanade Way, Conference Room 101 Tallahassee, FL 32399	10:01 A.M.	May 14, 2019
Anticipated Notice of Intended Award		May 28, 2019
Anticipated Contract start date		July 1, 2019

1 INTRODUCTION

1.1 Objective

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Diesel. The solicitation will be administered using MFMP Sourcing.

The current Bulk Fuel, Gasoline, and Diesel contract has approximately \$12 million in spend annually. State agencies account for 48% of the total annual spend. The historical spend is for informational purposes only and should not be construed as representing actual, guaranteed, or minimum spend under a new contract.

The Department intends to make regional awards with up to five Contractors per region. However, the Department reserves the right to award to one or multiple bidders, statewide or by counties, or to make no award, as determined to be in the best interest of the State.

1.2 Term

The initial term of the contract resulting from this solicitation will be for three years.

1.3 Renewal Term

Upon written agreement, the contract may be renewed in whole or in part for a period that will not exceed the term of the initial contract at the renewal pricing specified in the initial contract. Any renewal is contingent upon the satisfactory performance of the Vendor and subject to the availability of funds.

2 ITB OVERVIEW

2.1 Definitions

Definitions contained in section 287.012, F.S., Rule 60A-1.001, Florida Administrative Code (F.A.C.), Special Contract Conditions and the PUR 1001 form are incorporated by reference. In the event of a conflict, the definitions listed in this section supersede the incorporated definitions. All definitions apply in both their singular and plural sense.

Bidder or "Respondent" - A Vendor who submits a response to this ITB.

Biodiesel Blend - An alternative fuel consisting of Diesel Fuel, Grade No. 2-D Ultra Low Sulfur and a requested blend of soybean oil.

BQ-9000® - A cooperative and voluntary program for the accreditation of producers and marketers of biodiesel fuel created by the National Biodiesel Accreditation Program.

Business Day - Each day Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Time (ET) during which the State and its agencies are open for business.

Commodity - A product. The terms products and commodities may be used interchangeably throughout this ITB.

Commodity Code - The State of Florida numeric code for classifying commodities and contractual services that meet specific requirements, specifications, terms, and conditions herein. Florida has adopted the United Nations Standard Products and Services Code (UNSPSC) for classifying commodities and services.

Confidential Information - Any portion of a company's documents, data, or records relating to its bid that a Vendor claims is confidential and not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution, or other applicable authority, and that is clearly marked "Confidential".

Contract - The written agreement resulting from this ITB.

Contractor - The business entity that is awarded a Contract resulting from this ITB. The terms Vendor, Successful Bidder or Awarded Vendor may be used interchangeably throughout this ITB.

Customer - An ordering entity including state agencies and eligible users.

Dealer or Certified Representative - A representative authorized to market, sell, and service specific commodities such as gasoline and diesel.

Department - The Florida Department of Management Services.

DTN FastRacks Average - The fuel pricing service provided by the Data Transmission Network, an industry benchmark for pricing fuel and other commodities.

Eligible User (EU) - A governmental entity defined in Rule 60A-1.001, F.A.C.

Fuel - Any Fuel product obtained through this Contract. Fuel product shall include unleaded E10 gasoline, Ultra Low Sulfur no. 2 diesel, Ultra Low Sulfur no. 2 off road, dyed diesel and biodiesel to be delivered to State and Customer facilities.

Markup - The Contractor's price to cover all costs associated with providing Fuel to Customer facilities. Markups may differ based on where the Fuel is obtained according to the Fuel terminals and actual type of Fuel ordered. Markup for Fuel shall be on a price per gallon basis. Markup may be expressed as a negative number if the Contractor is offering a discount off the DTN FastRacks Average Price. The Contractor shall assess no other fees associated with the delivery of Fuel except as detailed in the Scope of Work (Attachment A).

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of 7,999 gallons for gasoline, 7,199 gallons for diesel, and 7,199 gallons for a combination load of gasoline and diesel.

Purchase - A transaction that results in the Customer obtaining ownership of a commodity.

Responsible vendor - A vendor who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance. (Subsection 287.012(25), F.S.)

Responsive bid - A bid submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation. (Subsection 287.012(26), F.S.)

State - The State of Florida.

Tank Wagon - A delivery by a tank wagon or other means with a minimum delivery of 500 gallons.

Transport Delivery - A delivery by a transport truck with a minimum delivery of 8,000 gallons for gasoline, 7,200 gallons for diesel, and 7,200 gallons for a combination load of gasoline and diesel.

United Nations Standard Products and Services Code (UNSPSC) - A commodity code list used by the State.

Vendor Bid System (VBS) - The State of Florida bidding system. (Subparagraph 287.042(3)(b)2., F.S.)

Vendor - An entity that is in the business of providing a commodity or service similar to those within the solicitation.

2.2 Procurement Officer

The Procurement Officer is the sole point of contact from the date of release of this ITB until 72 hours after the intent to award is posted.

The Procurement Officer for this ITB is:
Stephanie Wyland, Associate Category Manager
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Phone: (850) 488-1985
Email: Stephanie.Wyland@dms.myflorida.com

**** ALL EMAILS TO THE PROCUREMENT OFFICER SHOULD CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL ****

2.3 Limitation on Contact with Government Personnel (subsection 287.057(23), F.S.)

Between the release of this solicitation and the end of the 72-hour period following the Department posting the Notice of Intended Award, excluding Saturdays, Sundays, and State holidays (section 110.117, F.S.), Bidders to this solicitation or persons acting on their behalf may not contact any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the Procurement Officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

2.4 Must, Shall, Will, and Is Required

Although this solicitation uses terms such as "must," "shall," "will," and "is required," and may define certain items as requirements, the Department reserves the right, in its discretion, to waive any minor irregularity, technicality, or omission if the Department determines that it is in the best interest of the State to do so. However, failure to provide requested information may result in the rejection of a bid. There is no guarantee that the Department will waive an omission or deviation, or that any Vendor with a bid containing a deviation or omission will be considered for award of this procurement. The Department may reject any bid not submitted in the manner specified by this solicitation. The words "should" or "may" in this solicitation indicate desirable attributes or conditions but are permissive in nature.

2.5 Registration with the Florida Department of State

If awarded a Contract, the Bidder shall provide a PDF file of its current and active registration with the Department of State prior to contract execution. NOTE: Pursuant to section 607.1501, F.S., out-of-state corporations where required, must obtain a Florida Certificate of Authorization pursuant to section 607.1503, F.S., from the Florida Department of State, Division of Corporations, to transact business in the State of Florida. Website: www.sunbiz.org.

2.6 Florida Substitute Form W-9

All vendors must register and complete an electronic Florida Substitute Form W-9 prior to execution of a Contract. The Internal Revenue Service (IRS) receives and validates the information vendors provide on the Florida Substitute Form W-9. For instructions on how to complete the Florida Substitute Form W-9, please visit: <https://flvendor.myfloridacfo.com/>.

2.7 Special Accommodations

Any person requiring a special accommodation due to a disability should contact the Department's Americans with Disabilities Act (ADA) Coordinator at (850) 922-7535 at least five business days prior to the scheduled event. If you are hearing or speech impaired, please contact the ADA Coordinator by using the Florida Relay Service at (800) 955-8771 (TDD). The telephone numbers are supplied for notice purposes only.

2.8 Lobbying Disclosure

The successful Bidder shall comply with applicable federal requirements for the disclosure of information regarding lobbying activities of the successful Bidder, subcontractors or any authorized agent. Certification forms shall be filed by the successful Bidder and all subcontractors, certifying that no federal funds have been or shall be used in federal lobbying activities and the disclosure forms shall be used by the successful Bidder and all subcontractors to disclose lobbying activities. The successful Bidder shall comply with the provisions of section 216.347, F.S., which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature or a state agency.

2.9 Permits

The Customer will be responsible for all facility-required permits pertaining to Fuel storage, maintenance, and handling in accordance with all local, state and federal laws. The Contractor and Customer may work together to create a maintenance program for the fuel tanks.

2.10 Federal and State Standards

All specifications shall be in full and complete compliance with all Federal and State of Florida laws and regulations applicable to the type and class of Commodity being provided. This includes, but is not limited to, Federal Motor Equipment Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida requirements that apply to the type and class of Commodity being provided. In addition, any Federal or State legislation that should become effective during the term of the Contract, including any renewals, regarding equipment safety or emissions shall immediately become a requirement of the Contract. The Contractor must meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor must contact the Contract Manager immediately. Delivery of non-conforming product shall be cause for Contract termination and possible Contractor suspension.

2.11 Order of Precedence for Solicitation

In the event of a conflict, the conflict will be resolved in the following order of precedence (highest to lowest):

- a) Addenda to Solicitation, if issued (in reverse order of issuance)
- b) Attachment A: Scope of Work
- c) Attachment C: Special Contract Conditions
- d) This ITB and other Attachments

3 ITB BIDDING PROCESS

The ITB is a method of competitively soliciting a commodity or contractual service pursuant to paragraph 287.057(1)(a), F.S. The Department posts an ITB on the VBS to initiate the process and posts the ITB in MFMP Sourcing.

Bidders must submit questions in writing to the Procurement Officer via the Messages tab in MFMP Sourcing by the date listed in the Timeline of Events. Bids must be submitted in MFMP Sourcing by the deadline listed in the Timeline of Events. The Department will open the bids in a public meeting. Once the Department has verified the bids, the Department will post an agency decision in accordance with the Basis of Award section on the VBS.

3.1 False or Erroneous Information

The Department will evaluate responses from Responsive and Responsible Vendors. A Respondent who fails to provide the requested information or clarification or submits false or erroneous information may be deemed non-responsive and not awarded a contract. If the Respondent's response is found to contain false or erroneous information after contract award, the Contract may be terminated, and the Department may pursue any other legal action punishable by law.

3.2 Commitment to Diversity in Government Contracting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by woman-, veteran-, and minority-owned small businesses enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects certified business enterprises with private corporations for business development mentoring. The Department strongly encourages firms doing business with the State of Florida to consider participating in this initiative. More information on the Mentor Protégé Program may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915 or osdinfo@dms.myflorida.com.

The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this solicitation enthusiastically embrace diversity. The award of subcontracts should reflect the vast array of citizens in the State of Florida. The Bidder can contact the Office of Supplier Diversity at (850) 487-0915 for information on certified business enterprises that may be considered for subcontracting opportunities.

3.3 Question Submission

The Department invites interested and registered Vendors to submit questions regarding the solicitation. Vendors who have 'Joined' the MFMP Sourcing event are able to submit questions using the MFMP Sourcing 'Messages' tab (referred to as the "Q&A Board" in PUR 1001). Questions can be submitted in MFMP Sourcing until the Question Submission Deadline listed in the Timeline of Events.

The following quoted text replaces Paragraph 5 of PUR 1001:

"Questions must be submitted via the Q&A Board within MFMP Sourcing and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline of Events. Questions

shall be answered in accordance with the Timeline of Events. All questions submitted shall be published and answered in a manner that all proposers will be able to view. Proposers shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the Vendor Bid System for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained in the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 20 of these Instructions."

Bidders are strongly encouraged to raise any questions or concerns regarding this ITB, including the proposed Contract terms and conditions, during the open question period.

3.4 Addenda to the ITB

The Department reserves the right to modify this solicitation by addenda. Addenda may modify any aspect of this solicitation. Any addenda issued will be posted on the VBS. It is the Bidder's responsibility to check for any changes to a solicitation prior to submitting a bid.

3.5 Protest of Terms, Conditions, and Specifications

With respect to a protest of the terms, conditions and specifications contained in this solicitation, including any provisions governing the methods for scoring responses, awarding contracts, or modifying or amending any contract, a notice of protest shall be filed in writing with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within 72 hours after the posting of the solicitation. For purposes of this provision, the term "the solicitation" includes this solicitation document, any addendum, response to written questions, clarification or other document concerning the terms, conditions, and specifications of the solicitation.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S. When protesting a decision or intended decision (including a protest of the terms, conditions, and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

3.6 Public Opening

Bids will be opened on the date and at the location indicated in the Timeline of Events. Bidders are not required to attend. The Department generally does not announce prices or release other materials at this public meeting, pursuant to paragraph 119.071(1)(b), F.S.

3.7 Electronic Posting of Notice of Intended Award

The Department shall electronically post a Notice of Intended Award on the VBS for review by interested parties at the time and location specified in the Timeline of Events. The Notice of Intended Award shall remain posted for a period of 72 hours, not including weekends or State observed holidays. If the Notice of Intended Award is delayed, in lieu of posting the Notice of Intended Award the Department may post a notice of delay and a revised date for posting the Notice of Intended Award.

3.8 Protest of Notice of Intended Decision

Anyone desiring to protest the Notice of Intended Award shall file any notice of protest and any subsequent formal written protest with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within the time prescribed in subsection 120.57(3) F.S., and Chapter 28-110, Florida Administrative Code. The Procurement Officer should be copied on such filings.

When protesting a decision or intended decision (including a protest of the terms, conditions and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S.

3.9 Firm Response

The Department intends to award a contract within sixty days after the date of the bid opening, during which period bids shall remain firm and shall not be withdrawn. If an award is not made within sixty days, all bid responses shall remain firm until either the Department awards the Contract, or the Department receives from the Bidder written notice that the response is withdrawn. Bid responses that express a shorter duration may, in the Department's sole discretion, be accepted or rejected.

3.10 Modification or Withdrawal of Bid

Bidders are responsible for the content and accuracy of their bid. Bidders may modify or withdraw their bid at any time prior to the bid due date in accordance with the Timeline of Events.

3.11 Cost of Response Preparation and Independent Preparation

The costs related to the development and submission of a response to this ITB is the full responsibility of the Bidder and are not chargeable to the Department. A Bidder shall not, directly or indirectly, collude, consult, communicate or agree with any other Vendor or Bidder as to any matter related to the response each is submitting. Additionally, a Bidder shall not induce any other Bidder to modify, withdraw, submit or not submit a response.

3.12 Contract Formation

The Department may issue a Notice of Intended Award to successful Bidder(s). However, no contract shall be formed between a Bidder and the Department until the Department signs the contract. The Department shall not be liable for any work performed before the contract is effective.

The Department intends to enter into a contract(s) with Bidder(s) pursuant to the Basis of Award section of this solicitation. No additional documents submitted by a Bidder shall be incorporated in the contract unless it is specifically identified, incorporated by reference, and approved by the Department. If any additional documents are submitted by the Bidder, the additional documents will not be considered for the Basis of Award.

4 HOW TO BID ON THE ITB

This section contains instructions to Bidders on how to submit a bid.

4.1 General Instructions

PUR 1001, the General Instructions to Bidders, is incorporated by reference and provided via the link below:

<http://www.dms.myflorida.com/content/download/2934/11780/1001.pdf>

In the event any conflict exists between Attachment D – Special Instructions to Bidders and these General Instructions to Bidders, the Attachment D, Special Instructions shall prevail.

The following section of the PUR 1001 (General Instructions) is modified as follows:

9. In submitting a response, each respondent understands, represents, and acknowledges the following.

* The respondent is not currently under suspension or debarment by the State or any other governmental authority.

* To the best of the knowledge of the person signing the response, the Respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last 10 years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

* Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.

* The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.

* The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.

* The respondent has fully informed the Department in writing of all convictions of the firm, its affiliates (as defined in paragraph 287.133(1)(a), F.S.), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.

* Neither the Respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.

* The product offered by the Respondent will conform to the specifications without exception.

* The Respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.

* If an award is made to the Respondent, the Respondent agrees that it intends to be legally bound to the Contract that is formed with the State.

* The Respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.

* The Respondent shall indemnify, defend, and hold harmless the Department and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.

* All information provided by, and representations made by, the Respondent are material and important and will be relied upon by the Department in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Department of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817, F.S.

4.2 How to Submit a Bid

Bidders will submit their bids electronically via MFMP Sourcing. Bidders shall enter all required attachments and documents electronically in MFMP Sourcing during this solicitation as indicated. The Department will only evaluate bids submitted using MFMP Sourcing.

Mass produced general information/promotional material about the Bidder that is prepared/printed for general distribution is not permitted. The emphasis of each bid shall be on completeness and clarity of content, prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this solicitation.

By submitting a bid to this solicitation, the Bidder agrees to and waives any objections to requirements contained in the solicitation. By submitting a bid, the Bidder certifies that it agrees to and satisfies all requirements specified in this solicitation.

Respondents must upload an electronic copy of all required documentation in the MFMP Sourcing application. The following conditions apply:

- In the case where the Department provides an attachment that is able to be filled in, Respondents are to download the attachment, fill it out, and then attach the filled in copy in the link provided.
- In the case of original or signed documentation, Respondents may attach scanned copies of original documents which have been filled in and signed by an individual authorized to respond on the Bidder's behalf.
- In the case where multiple original or signed items are requested as part of a single requirement, please combine multiple scanned items into a single PDF attachment. Each link in MFMP will only accept a single attachment.
- MFMP accepts files up to 20 megabytes (MB) in size.

Submit all required attachments and documentation in MFMP Sourcing in accordance with the applicable instructions. Failure to submit all of the required attachments and documentation in MFMP Sourcing may result in a determination of Bidder non-responsiveness. Bidders are responsible for submitting their bids in MFMP Sourcing by the date and time specified in the Timeline of Events of this solicitation. The Department will not consider late bids.

Attachments submitted in MFMP Sourcing should be named similarly to the following file naming conventions:

Example:

JohnDoeLLC_Attachment_E.pdf

JohnDoeLLC_AttachmentJMarkupSheet.xlsx (Excel)

5 PRIOR TO AWARD

5.1 Rejection of Bids

Bids that do not meet all requirements, specifications, terms, and conditions of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Bidders whose bids, references, or current status does not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a contract may be rejected as not responsible. The Department reserves the right to determine which bids meet the requirements of this solicitation, and which Bidders are responsive and responsible.

5.2 Minor Irregularities/Right to Reject

The Department reserves the right to accept or reject any or all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so shall serve the Department's best interests. The Department may reject any response not submitted in the manner specified by the solicitation documents.

5.3 Redacted Submissions

The following section supplements section 19 of the PUR 1001. If Bidder considers any portion of the documents, data or records submitted in response to this solicitation to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution or other authority, Bidder must mark the document as "Confidential" and simultaneously provide the Department with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law,

including the specific statutory citation for such exemption. This redacted copy shall contain the Department's solicitation name, number, and the Bidder's name on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Bidder claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

In the event of a request for public records pursuant to Chapter 119, F.S., the Florida Constitution or other authority, to which documents that are marked as confidential are responsive, the Department will provide the Redacted Copy to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Bidder such an assertion has been made. It is the Bidder's responsibility to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Bidder in a legal proceeding, the Department shall give the Bidder prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Bidder shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

By submitting a bid, the Bidder agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Bidder's determination that the redacted portions of its bid are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Bidder fails to submit a redacted copy of information it claims is confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request for these records.

5.4 Additional Information

By submitting a bid, Bidder certifies that it agrees to and satisfies all requirements specified in the ITB. The Department may request, and Bidder shall provide, additional supporting information or documentation. Failure to supply supporting information or documentation as required and requested may result in the bid being deemed non-responsive.

5.5 Bid Disqualification

Bids that do not meet all requirements, specifications, terms and conditions of the solicitation or fail to provide all required information, documents or materials may be rejected as non-responsive. Bids that contain provisions that are contrary to the requirements of the solicitation are not permitted. Bidders whose bids, past performance or current status do not reflect the capability, integrity or reliability to fully and in good faith perform the requirements of this solicitation may be rejected as non-responsive. The Department reserves the right to determine which bids meet the requirements of this solicitation and which Bidders are responsive and responsible.

6 BASIS OF AWARD

The Contract will be awarded to the responsible and responsive bidders with the lowest Calculated Markup for each fuel and delivery type in each of the four regions, as shown on the Markup Sheet (Attachment J). The Department may issue up to five awards for each fuel and delivery type in each of the four regions described in the Scope of Work (Attachment A).

6.1 Transport Delivery

For Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(T^I \times 0.54) + (A^I \times 0.06) + (T^R \times 0.36) + (A^R \times 0.04) = Z$$

Where:

T^I = Initial Term Markup

A^I = Sum of Initial Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

T^R = Renewal Term Markup

A^R = Sum of Renewal Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

Z = Bidder's Calculated Markup

6.2 Non-Transport Delivery

For Non-Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(NI \times 0.54) + (BI \times 0.06) + (NR \times 0.36) + (BR \times 0.04) = Z$$

Where:

NI = Initial Term Markup

BI = Sum of Initial Term Allowable Charges ("All Delivery Types" only)

NR = Renewal Term Markup

BR = Sum of Renewal Term Allowable Charges ("All Delivery Types" only)

Z = Bidder's Calculated Markup

6.3 Preference to Florida Businesses

Pursuant to the requirements of paragraph 287.084(1)(a), F.S., if the lowest responsible and responsive bid is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, the Department will award a preference to the lowest responsible and responsive bidder having a principal place of business within Florida, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive bidder has its principal place of business.

If the lowest bid is submitted by a bidder whose principal place of business is located outside the state, and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive bidder having a principal place of business in this state will be five percent.

A vendor whose principal place of business is outside this state must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts

7 ITB ATTACHMENTS

Attachment A	Scope of Work
Attachment B	Draft Contract
Attachment C	Special Contract Conditions
Attachment D	Special Instructions for Bidders
Attachment E	Responsiveness Requirements
Attachment F	Vendor Information Form
Attachment G	Certification of Drug-Free Workplace
Attachment H	Quarterly Sales Report
Attachment I	Savings/Price Reductions
Attachment J	Markup Sheet
Attachment K	No Offshoring

Required Documents to be submitted by vendor prior to ITB opening

Attachment E Responsiveness Requirements

Attachment G Certification of Drug-Free Workplace (if applicable)

Attachment J Markup Sheet

Written Opinion of an Attorney at Law - Section 6.3 of the ITB (if applicable)

WESTERN REGION

*Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson,
Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa,
Taylor, Wakulla, Walton, and Washington Counties*

**Kimbles Aviation
Logistical Services**

**Mansfield Oil Company
of Gainesville, Inc.**

**Petroleum Traders
Corporation**

Group A - Diesel Fuel, Grade No. 2-D Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.05	\$0.02	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48

Group B - Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.06	\$0.02	\$0.02
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48

Group C - Biodiesel Blend (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.06	\$0.21	N/A
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	N/A

Group D - Gasoline E10, Unleaded 87 Octane (Markup per Gallon)

Transport Delivery (6,000 - 8,500 gallons)	\$0.07	\$0.01	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48

Allowable Charges - All Delivery Types

Delivery Charge (per gallon)	\$0.10	\$0.10	\$0.06
Delay Charge (per 30 minutes)	\$10.00	\$0.00	\$0.00
Back Haul Charge (per gallon)	\$0.10	\$0.00	\$0.05
Top Off Charge (flat rate, not to exceed)	\$150.00	\$0.00	\$0.00
Emergency Delivery Charge (per gallon, not to exceed)	\$0.50	\$0.00	\$0.05

Allowable Charges - Transport Delivery Only

Freight Charge (flat rate, not to exceed)	\$150.00	\$0.00	\$0.00
Pump Off Charge (per pump off, not to exceed)	\$20.00	\$0.00	\$10.00
Maximum Pump Off Charge (per delivery, not to exceed)	\$50.00	\$0.00	\$10.00

NORTHERN REGION

*Alachua, Baker, Bradford, Clay, Columbia, Duval, Flagler, Gilchrist,
Hamilton, Levy, Marion, Nassau, Putnam, St. Johns, Suwannee, Union,
and Volusia Counties*

Kimbles Aviation Logistical Services	L.V. Hiers, Inc.	Mansfield Oil Company of Gainesville, Inc.	Petroleum Traders Corporation	Pro Energy Fleet Fueling LLC
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Group A - Diesel Fuel, Grade No. 2-D Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.05	\$0.03	-\$0.02	\$0.01	\$0.04
Non-Transport Delivery (500 - 5,999 gallons)	N/A	\$0.37	N/A	\$0.48	N/A

Group B - Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.06	\$0.03	-\$0.02	\$0.02	\$0.04
Non-Transport Delivery (500 - 5,999 gallons)	N/A	\$0.37	N/A	\$0.48	N/A

Group C - Biodiesel Blend (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.07	N/A	\$0.09	N/A	N/A
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	N/A	N/A	N/A

Group D - Gasoline E10, Unleaded 87 Octane (Markup per Gallon)

Transport Delivery (6,000 - 8,500 gallons)	\$0.06	\$0.03	-\$0.01	\$0.01	\$0.04
Non-Transport Delivery (500 - 5,999 gallons)	N/A	\$0.37	N/A	\$0.48	N/A

Allowable Charges - All Delivery Types

Delivery Charge (per gallon)
Delay Charge (per 30 minutes)
Back Haul Charge (per gallon)
Top Off Charge (flat rate, not to exceed)
Emergency Delivery Charge (per gallon, not to exceed)

\$0.10	\$0.00	\$0.11	\$0.06	\$0.04
\$10.00	\$50.00	\$0.00	\$0.00	\$32.50
\$0.10	\$0.10	\$0.00	\$0.05	\$0.00
\$150.00	\$100.00	\$0.00	\$0.00	\$0.00
\$0.50	\$0.10	\$0.00	\$0.05	\$0.00

Allowable Charges - Transport Delivery Only

Freight Charge (flat rate, not to exceed)
Pump Off Charge (per pump off, not to exceed)
Maximum Pump Off Charge (per delivery, not to exceed)

\$150.00	\$0.07	\$0.00	\$0.00	\$0.00
\$20.00	\$75.00	\$0.00	\$10.00	\$40.00
\$50.00	\$75.00	\$0.00	\$10.00	\$0.00

CENTRAL REGION

*Brevard, Charlotte, Citrus, Desoto, Hardee, Hernando, Highlands,
Hillsborough, Indian River, Lake, Lee, Manatee, Okeechobee, Orange,
Osceola, Pasco, Pinellas, Polk, Sarasota, Seminole, St. Lucie, and Sumter
Counties*

Kimbles Aviation Logistical Services	Mansfield Oil Company of Gainesville, Inc.	Petroleum Traders Corporation	Pro Energy Fleet Fueling LLC
Group A - Diesel Fuel, Grade No. 2-D Ultra Low Sulfur (Markup per Gallon)			
Transport Delivery (6,000 - 7,500 gallons)	\$0.05	\$0.00	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48

Group B - Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.06	\$0.00	\$0.02	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48	N/A

Group C - Biodiesel Blend (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.08	\$0.09	N/A	N/A
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	N/A	N/A

Group D - Gasoline E10, Unleaded 87 Octane (Markup per Gallon)

Transport Delivery (6,000 - 8,500 gallons)	\$0.06	-\$0.02	\$0.01	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.48	N/A

Allowable Charges - All Delivery Types

Delivery Charge (per gallon)	\$0.10	\$0.10	\$0.06	\$0.03
Delay Charge (per 30 minutes)	\$10.00	\$0.00	\$0.00	\$32.50
Back Haul Charge (per gallon)	\$0.10	\$0.00	\$0.05	\$0.00
Top Off Charge (flat rate, not to exceed)	\$150.00	\$0.00	\$0.00	\$0.00
Emergency Delivery Charge (per gallon, not to exceed)	\$0.50	\$0.00	\$0.05	\$0.00

Allowable Charges - Transport Delivery Only

Freight Charge (flat rate, not to exceed)	\$150.00	\$0.00	\$0.00	\$0.00
Pump Off Charge (per pump off, not to exceed)	\$20.00	\$0.00	\$10.00	\$40.00
Maximum Pump Off Charge (per delivery, not to exceed)	\$50.00	\$0.00	\$10.00	\$0.00

SOUTHERN REGION

Broward, Collier, Glades, Hendry, Martin, Miami-Dade, Monroe, and Palm Beach Counties

**Kimbles Aviation
Logistical Services**

**Mansfield Oil Company
of Gainesville, Inc.**

**Pro Energy Fleet Fueling
LLC**

Group A - Diesel Fuel, Grade No. 2-D Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.04	-\$0.02	\$0.00
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.25

Group B - Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.04	-\$0.02	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.25

Group C - Biodiesel Blend (Markup per Gallon)

Transport Delivery (6,000 - 7,500 gallons)	\$0.08	\$0.13	N/A
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	N/A

Group D - Gasoline E10, Unleaded 87 Octane (Markup per Gallon)

Transport Delivery (6,000 - 8,500 gallons)	\$0.03	-\$0.03	\$0.01
Non-Transport Delivery (500 - 5,999 gallons)	N/A	N/A	\$0.25

Allowable Charges - All Delivery Types

Delivery Charge (per gallon)
 Delay Charge (per 30 minutes)
 Back Haul Charge (per gallon)
 Top Off Charge (flat rate, not to exceed)
 Emergency Delivery Charge (per gallon, not to exceed)

\$0.10	\$0.12	\$0.03
\$10.00	\$0.00	\$32.50
\$0.10	\$0.00	\$0.00
\$150.00	\$0.00	\$0.00
\$0.50	\$0.00	\$0.00

Allowable Charges - Transport Delivery Only

Freight Charge (flat rate, not to exceed)
 Pump Off Charge (per pump off, not to exceed)
 Maximum Pump Off Charge (per delivery, not to exceed)

\$150.00	\$0.00	\$0.00
\$20.00	\$0.00	\$40.00
\$50.00	\$0.00	\$0.00

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Department of Management Services

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Petroleum Traders Corporation

Contractor Attributes

CBE Code	Florida Climate Friendly Preferred Products	Recycled Products	Utilizes Authorized Coverage Area Resellers	
A - Non-Minority	No	No	No	Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hardee, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, Saint Johns, Saint Lucie, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, Washington

Customer Contact

Street Address or P.O. Box: P.O. Box 2357
City, State, Zip: Fort Wayne, IN 46801-2357
Email Address: bidorders@petroleumtraders.com
Phone Number: 888-637-7661
Ordering Fax: 260-203-3820
Internet Address: www.petroleumtraders.com
FEIN: 35-1462227
Remit-To Address: P.O. Box 2357
City, State, Zip: Fort Wayne, IN 46801-2357

Contract Administrator

Name: Gayle Newton
Title: Contract Sales Manager
Street Address or P.O. Box: P.O. Box 2357
City, State, Zip: Fort Wayne, IN 46801-2357
Email Address: gnewton@petroleumtraders.com
Phone Number: 888-637-7661
Fax Number: 260-203-3820

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Management Services - State of Florida

In Process

City of Palm Coast, Florida
Agenda Item

Agenda Date :10/29/2019

Department	CITY CLERK	Amount
Item Key		Account
Subject	CALENDAR/WORKSHEET	
Background :		
Recommended Action :		



Meeting Calendar for 10/29/2019 through 11/30/2019

10/29/2019 9:00 AM

City Council Workshop
City Hall

11/5/2019 6:00 PM

City Council
City Hall

11/6/2019 10:00 AM

Code Enforcement Board
City Hall

11/12/2019 9:00 AM

City Council Workshop
City Hall

11/15/2019 8:30 AM

Volunteer Firefighters' Pension Board
Fire Station #25

11/19/2019 9:00 AM

City Council
City Hall

11/20/2019 5:30 PM

Planning & Land Development Regulation Board
City Hall

11/26/2019 9:00 AM

City Council Workshop
City Hall

			Business 11/05/2019	
1		Resolution	Emergency Install of Pep Tanks	Adams
2		Resolution	FEMA Manhole Dishes	Adams
3		Resolution	Emergency Replacement PEP Tanks	Adams/Ashburn
4		Resolution	MSA for Directional Boring Services	Adams/Roussell
5		Resolution	Financial Consultant for Disaster Recovery	Alves
6		Resolution	Easement Lehigh Trail Restroom Facilities	Cote/Papa
7		Resolution	Hazard Mitigation Grant Program Pump Station Generator Project	Cote/Kronenberg
8		Resolution	Engineering Design/Construction Services for Pump Station Generator	Cote/Kronenberg
9		Ordinance 1st	Through Truck Ordinance	Cote/Grunewald
10		Ordinance	Matanzas Lake Final Plat	Hoover
11		Proclamation	Keep America Beautiful	Johnston
12		Resolution	Lease Agreement Diamond Frieda Zamba Pool	Kewley/Eldredge
13		Ordinance 1st	Oare MPD Amendment	Papa
14		Appointment	Appoint Members to the Code Board	Smith
15		Appointment	Appoint a Member to the BEAC	Smith
16		Proclamation	Diabetes Awareness	Smith
			Workshop 11/12/2019	
1		Resolution	Stop loss/Health Insurance	Streichsbier
			Business 11/19/2019	
1		Ordinance 2nd	Through Truck Ordinance	Cote/Grunewald
2		Ordinance 2nd	Oare MPD Amendment	Papa
3		Resolution	Stop loss/Health Insurance	Streichsbier
			Workshop 11/26/2019	
			Business 12/03/2019	
			Workshop 12/10/2019	
			Business 12/17/2019	
1		Presentation	Flagler Schools-Innovation Project Awards	Kewley
			Workshop 12/31/2019-CITY OFFICES CLOSED	
			Business 01/07/2020	
			Future	
1		Resolution	Annual Fire Inspection Fees	Alves
2		Presentation	Security Assessment Review	Akins
3		Presentation	Finance Awards	Alves
4		Resolution	Pine Lakes Pkwy Forcemain and Lift Station Improvements	Blake/Kronenberg

5	Resolution	Equip 3 Wells and Raw Water Main, PH 3	Blake/Kronenberg
6	Resolution	Advent Health Design Svc. Agreement OKR Ext.	Cote
7	Ordinance 2nd	Through Truck Traffic	Cote/Grunewald
8	Resolution	IA FC Service Agreement	Forte/Berryhill
9	Resolution	IA FC Lease Program radios and service agreement	Forte/Berryhill
10	Presentation	Fire Impact Fee and Fire 10 yr plan	Forte/Clark/Cote
11	Ordinance 1st	Animal Control amendment	Grossman
12	Ordinance	LDC Architectural Chapter 13	Hoover/Dawson
13	Resolution	WAWA - ROW lease - PC Parkway	Hoover
14	Resolution	WAWA - Bulldog	Hoover
15	Resolution	Sawmill Creek Phase I - Final Plat	Hoover
16	Resolution	Palm Coast Storage -Technical Site Plan Tier 3	Hoover
17	Resolution	IA County for field usage	Johnston
19	Resolution	Project Price is Right Incentive Agreement	Kewley
20	Ordinance	Old Kings Road, South MPD	Papa
21	Resolution	Advent Health Impact Fee Agreement	Papa
22	Resolution	Grand Landings Phase IV-Final Plat	Ramirez
23	Presentation	2019 Workshop Meeting - LDC Signs Chapter 9	CDD