



**City of Palm Coast**  
**Agenda**  
**COUNCIL BUSINESS**  
**MEETING**

City Hall  
160 Lake Avenue  
Palm Coast, FL 32164  
[www.palmcoastgov.com](http://www.palmcoastgov.com)

**Mayor David Alfin**  
**Vice Mayor Ed Danko**  
**Council Member Cathy Heigher**  
**Council Member Nick Klufas**  
**Council Member Theresa Pontieri**

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**Tuesday, October 3, 2023**

**6:00 PM**

**COMMUNITY WING**

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**City Staff**

**Denise Bevan, City Manager**

**Neysa Borkert, City Attorney**

**Kaley Cook, 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 and Section 286.26, Florida Statutes, persons needing a reasonable accommodation to participate in any of these proceedings or meeting 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>.
- It is proper meeting etiquette to silence all electronic devices, including cell phones while Council is in session.
- Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**A. CALL TO ORDER**

**B. PLEDGE OF ALLEGIANCE TO THE FLAG AND A MOMENT OF SILENCE**

**C. ROLL CALL**

**D. PUBLIC PARTICIPATION**

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. And pursuant to the City Council's Meeting Policies and Procedures:

- (1) Each speaker shall at the podium, provide their name and may speak for up to 3 minutes.
- (2) The Public may provide comments to the City Council relative to matters not on the agenda at the times indicated in this Agenda. Following any comments from the public,

there may be discussion by the City Council.

(3) When addressing the City Council on specific, enumerated Agenda items, speakers shall:

(a) direct all comments to the Mayor;

(b) make their comments concise and to the point;

(c) not speak more than once on the same subject;

(d) not, by speech or otherwise, delay or interrupt the proceedings or the peace of the City Council;

(e) obey the orders of the Mayor or the City Council; and

(f) not make any irrelevant, impertinent or slanderous comments while addressing the City Council; which pursuant to Council rules, shall be considered disorderly.

(4) Any person who becomes disorderly or who fails to confine his or her comments to the identified subject or business, shall be cautioned by the Mayor and thereafter must conclude his or her remarks on the subject within the remaining designated time limit.

Any speaker failing to comply, as cautioned, shall be barred from making any additional comments during the meeting and may be removed, as necessary, for the remainder of the meeting.

Members of the public may make comments during the public comment portion of the meeting. Please be advised that public comment will only be permitted during the public comment portions of the agenda at the times indicated by the Chair during the meeting.

**E. MINUTES**

- 1. MINUTES OF THE CITY COUNCIL:  
SEPTEMBER 19, 2023, BUSINESS MEETING  
SEPTEMBER 20, 2023, FINAL BUDGET HEARING**

**F. PROCLAMATIONS AND PRESENTATIONS**

- 2. PROCLAMATION - THE WEEK OF OCTOBER 2, 2023, AS CUSTOMER SERVICE WEEK**
- 3. PROCLAMATION - OCTOBER 3, 2023, AS FIRE POLICE RECOGNITION DAY**
- 4. PROCLAMATION - THE WEEK OF OCTOBER 8, 2023, AS FIRE PREVENTION WEEK**
- 5. PROCLAMATION - OCTOBER 2023 AS WHITE CANE AWARENESS MONTH**
- 6. PRESENTATION - PHOTO CONTEST WINNERS & AWARDS**

**G. ORDINANCES SECOND READ**

- 7. ORDINANCE 2023-XX AMENDMENTS TO THE SPECIAL EVENT ORDINANCE**

**H. RESOLUTIONS**

- 8. RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., APPROVAL OF CONSTRUCTION ENGINEERING INSPECTIONS SERVICES, AND A PROJECT CONTINGENCY FOR JAMES F. HOLLAND PARK SPLASH PAD REPAIRS**
- 9. RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., A WORK ORDER WITH PEGASUS ENGINEERING, LLC, FOR GRANT COMPLIANCE, AND A PROJECT CONTINGENCY FOR LONG CREEK NATURE PRESERVE**
- 10. RESOLUTION 2023-XX APPROVING A WORK ORDER WITH DRMP, INC., FOR ENGINEERING SERVICES FOR REAL TIME FLOOD FORECASTING**
- 11. RESOLUTION 2023-XX APPROVING A WORK ORDER WITH ENGLAND-THIMS & MILLER, INC., TO PROVIDE ENGINEERING SERVICES FOR WATER QUALITY MONITORING PROGRAM IMPLEMENTATION**
- 12. RESOLUTION 2023-XX AUTHORIZING THE CITY MANAGER TO SIGN HAZARD MITIGATION GRANT PROGRAM ASSISTANCE APPLICATIONS, AS REQUESTED BY THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT**
- 13. RESOLUTION 2023-XX AMENDING THE SPECIAL EVENT FEE SCHEDULE**

**I. CONSENT**

- 14. RESOLUTION 2023-XX ESTABLISHING THE FEE STRUCTURE FOR CHARGEPOINT ELECTRIC VEHICLE CHARGER AND PROVIDING THE CITY MANAGER WITH AUTHORITY TO MAKE ADJUSTMENTS AS NECESSARY**
- 15. RESOLUTION 2023-XX APPROVING MASTER SERVICE AGREEMENT WITH MULTIPLE FIRMS FOR LANDSCAPE MAINTENANCE SERVICES**
- 16. RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR DRYING BED CLEANING**
- 17. RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**
- 18. RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**
- 19. RESOLUTION 2023-XX APPROVING PIGGYBACKING MOMAR, INC., WITH JEA (JACKSONVILLE ELECTRIC AUTHORITY) CONTRACT FOR THE PURCHASE OF BULK GLYCERIN**

**J. PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

**K. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**

**L. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**

**M. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**

**N. ADJOURNMENT**

**20. AGENDA WORKSHEET AND CALENDAR**

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> CITY ADMINISTRATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> MINUTES OF THE CITY COUNCIL: SEPTEMBER 19, 2023, BUSINESS MEETING SEPTEMBER 20, 2023, FINAL BUDGET HEARING	
<b>Presenter:</b> Kaley Cook, City Clerk	
<b>Attachments:</b> 1. Minutes (2)	
<b>Background:</b>	
<b>Recommended Action:</b> <b>APPROVE MINUTES OF THE CITY COUNCIL:</b> <b>SEPTEMBER 19, 2023, BUSINESS MEETING</b> <b>SEPTEMBER 20, 2023, FINAL BUDGET HEARING</b>	



**City of Palm Coast  
Minutes  
COUNCIL BUSINESS  
MEETING**

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

**Mayor David Alfin  
Vice Mayor Ed Danko  
Council Member Cathy Heighter  
Council Member Nick Klufas  
Council Member Theresa Pontieri**

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**Tuesday, September 19, 2023**

**9:00 AM**

**COMMUNITY WING**

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**City Staff**

**Denise Bevan, City Manager  
Neysa Borkert, City Attorney  
Kaley Cook, City Clerk**

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**A. CALL TO ORDER**

*Mayor Alfin called the meeting to order at 9 a.m.*

**B. PLEDGE OF ALLEGIANCE TO THE FLAG AND A MOMENT OF SILENCE**

**C. ROLL CALL**

*City Clerk Kaley Cook called the roll. All members were present. Mayor Alfin asked for a consensus to move items 11 and 12 to the beginning of the agenda. Council concurred.*

**D. PUBLIC PARTICIPATION**

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*Renee Newton asked if comments can be held until after the Cascades presentation and spoke about what was shared at the planning presentation.*

*Jeffrey Seib spoke on behalf of support for the City's consideration on further steps to insulate residents against future negative environmental elements and provided suggestions.*

*Dennis McDonald spoke about a radio appearance, public records requests, communications between Council Members, and Sunshine Laws. Mr. McDonald asked Mayor Alfin to tell residents about his communications including ex parte communications.*

*Mayor Alfin stated that there were no communications made with other members of City Council and that he would follow up.*

*Council Member Heighter shared about an email and print out received from Mayor Alfin regarding attainable housing and that she discussed the matter with Ms. Bevan.*

*Mayor Alfin clarified that there was no discussion.*

*Council Member Heighter responded yes.*

*There were no other public comments.*

*Vice Mayor Danko asked to clarify Council Member Heighter's comments and asked if Council Member Heighter discussed this with Ms. Bevan.*

*Council Member Heighter responded yes and provided additional details.*

*Attorney Borkert provided details of the conversation and the advice provided.*

*City Council held discussion with Ms. Borkert regarding allowable conversations.*

## **E. MINUTES**

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heighter**

- 1. MINUTES OF THE CITY COUNCIL:  
SEPTEMBER 5, 2023, BUSINESS MEETING  
SEPTEMBER 7, 2023, BUDGET HEARING  
SEPTEMBER 12, 2023, WORKSHOP MEETING**

*Motion by Vice Mayor Danko, seconded by Council Member Pontieri, to approve the September 5, 2023, Business Meeting Minutes. The motion passed unanimously.*

*Motion by Council Member Pontieri, seconded by Council Member Klufas, to approve the September 7, 2023, Budget Hearing Minutes.*

*Motion by Vice Mayor Danko, seconded by Council Member Pontieri, to approve the September 12, 2023, Workshop Meeting Minutes. The motion passed unanimously.*

## **F. PROCLAMATIONS**

- 2. PROCLAMATION - OCTOBER 2023 AS "RAISE THE PINK FLAG WITH THE PINK ARMY" MONTH IN SUPPORT OF BREAST CANCER AWARENESS**

*Council Member Pontieri presented the Proclamation to representatives of Advent Health and the Pink Army.*

*Representatives of the Pink Army Event shared information, additional events, and about a future cancer center to be built in Palm Coast.*



*A member of the public asked where information can be found.*

*Contact information was provided.*

*Jared Dawson, Recreation Coordinator, provided information about upcoming events.*

**3. PROCLAMATION - SEPTEMBER 15, 2023, TO OCTOBER 15, 2023, AS HISPANIC HERITAGE MONTH**

*Mayor Alfin presented the Proclamation.*

*Dr. Maria Dowling, Chair of the Hispanic Business Alliance, thanked Mayor Alfin and City Council for the Proclamation.*

*Mayor Alfin shared comments about understanding the importance of the Proclamation and about diversity in our community.*

**4. PROCLAMATION - OCTOBER 2023 AS NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH**

*Council Member Heighter spoke about the Pink Army and awareness of male breast cancer.*

*Council Member Heighter presented the Proclamation to members of the Family Life Center.*

*Trish Giaccone, CEO of the Family Life Center, shared thanks and comments.*

*Council Member Heighter asked where donations can be made.*

*Ms. Giaccone provided donation information.*

*Candace Wilkie, Domestic Violence Services Coordinator, shared about events occurring in the month of October.*

*Christopher Ray, treasurer of the Blue Knight 22 Motorcycle Group, and additional members of the group, presented the Family Life Center with a \$1,000 donation.*

**G. APPOINTMENT**

**5. APPOINT FOUR (4) REGULAR MEMBERS AND TWO (2) ALTERNATE MEMBERS TO THE CODE ENFORCEMENT BOARD**

*Virginia Smith, Land Management Administrator, provided an overview of the item.*

*City Council held a question-and-answer session with each of the applicants.*

*City Council reappointed Mr. Arcamone, Mr. Roberts, and Mr. Pulos to their respective seats. City Council appointed Mr. Stancel to Mr. Sullivan's seat, and appointed Mr. Zucca and Mr. Andrejczyk as alternate members.*

## **H. ORDINANCES SECOND READ**

### **6. ORDINANCE 2023-XX 5TH AMENDMENT TO THE PALM COAST PARK MASTER PLANNED DEVELOPMENT (MPD) AGREEMENT APPLICATION NO. 5276**

*Ray Tyner, Deputy Chief Development Officer, explained that the applicant has asked for a continuance of this item.*

### **7. ORDINANCE 2023-13 VOLUNTARY ANNEXATION OF AN APPROXIMATELY 62.1 ACRE PARCEL GENERALLY LOCATED ON THE EAST SIDE OF OLD KINGS ROAD APPROXIMATELY 2.5 MILES SOUTH OF STATE ROAD 100**

*Attorney Borkert read the title into the record.*

*Mayor Alfin asked Ms. Borkert to clarify the item before Council today.*

*Attorney Borkert provided a description on annexation and the decision before Council.*

*Council Member Pontieri asked if City Council has a wide range of discretion to decide if they want to annex the property.*

*Attorney Borkert responded yes.*

*Mr. Tyner provided a background of the item and reminded City Council that this is the second reading of the item.*

*Mr. Chiumento, on behalf of the applicant, discussed a request by the City to have the developer commit to some improvements that would address the neighborhood's concerns at this point. Mr. Chiumento outlined City Council's suggestion of a voluntary agreement and stated that the applicant is happy to execute the agreement.*

*City Council asked for time to review the voluntary agreement.*

*Council Member Pontieri and Mr. Chiumento held discussion on the exhibits of the agreement.*

*Council Member Pontieri shared concern for the commercial reference and requested that the language be added.*

*Council Member Pontieri asked if the developer intends to keep the natural buffers and any changes to the conceptual plan.*

*Mr. Chiumento provided information on where the developer is currently in the process.*

*Council Member Pontieri asked to speak to the developer and discussed the legal standing of comments made from the developer versus the attorney representing the developer.*

*Attorney Borkert explained that the item is legislative, not quasi-judicial.*

*Attorney Borkert asked for clarification on the request for commercial language.*

*Mayor Alfin reiterated discussion at the beginning of this item and the decision which was before Council for consideration.*

*Council Member Pontieri discussed the history of the item and importance of using discretion.*

*Mr. Chiumento shared comments on the property owner's willingness to work with Council.*

*Council Member Klufas spoke about the approach to annexations.*

*Council Member Heighter agreed with Council Member Klufas' comments.*

*Vice Mayor Danko thanked the developer for working with Council.*

*Mayor Alfin appreciated the support of the community.*

*Public Comment:*

*Bob Addick requested to see the voluntary commitment agreement and shared additional requests from the group.*

*John Duncan shared that this is more than an annexation of a vacant property. Mr. Duncan spoke about the planning meeting, conceptual drawings, and information that the residents of the area have yet to receive.*

*Laura Biddle spoke about the community meeting and shared concern for the minutes of the meeting. Ms. Biddle stated that she would like to have more time spent to work with the developer to work with the community*

*Bob Addick spoke about enclaves and joining City property.*

*Council Member Klufas asked developer representation for comments that were made at the community meeting.*

*Mr. Chiumento responded to public comments.*

*Council Member Klufas asked if there is a timeline which is more reasonable that residents can expect the information.*

*Mr. Chiumento provided information about the timeline.*

*Council Member Pontieri shared appreciation for members of Polo Club West and the developer for working with Council and staff. Council Member Pontieri encouraged staff to take into consideration what members of the community have asked for.*

*Mayor Alfin shared that he is troubled by the cart before the horse and asked, with consensus of Council, for staff to make sure that City Council Members are aware of the specific requests that the community have asked for. Council concurred.*

**Pass**

**Motion made to be adopted on second reading by Vice Mayor Danko and seconded by Council Member Klufas**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**I. ORDINANCES FIRST READ**

**8. ORDINANCE 2023-XX A FLUM AMENDMENT FOR 375+/- ACRE AREA FROM COUNTY DESIGNATION OF RESIDENTIAL LOW DENSITY/RURAL ESTATE AND CONSERVATION TO CITY OF PALM COAST DESIGNATION OF RESIDENTIAL AND CONSERVATION WITH POLICY TO LIMIT DEVELOPMENT TO 850 UNITS**

*Attorney Borkert read the title into the record.*

*Mr. Tyner provided a background of the item and explained that items 8 and 9 will be presented together.*

*Jose Papa, Senior Planner, presented item 8. Bill Hoover, Senior Planner, presented item 9. Topics presented included: background, current Future Land Use Map (FLUM) and zoning map designation, proposed FLUM, public facilities impact analysis, environmental impact analysis, consistency with surrounding land use, consistency with Comprehensive Plan policies, findings, Planning and Land Development Regulation Board recommendation, existing zoning, proposed zoning, background, zoning development standards, five review criteria, staff analysis based on the Land Development Code, public participation, recommendation, and next steps.*

*Kaley Cook, City Clerk, conducted an oath for any members testifying in the items.*

*Attorney Borkert read the title of item 9 into the record.*

*Mr. Chiumento, on behalf of the applicants, provided information on the topics presented.*

*Council Member Klufas shared appreciation for the amendments.*

*Mayor Alfin spoke about the community and developer working together and a significant shift to the original plan.*

*Council Member Pontieri asked staff if the 650 square feet living area is delineated somewhere in our code minimums.*

*Mr. Hoover provided a response.*

*Public Comment for item 8 and 9:*

*Joelle Meda, a resident located near the project, shared that she never received a letter and shared concern for traffic and children's bus stops.*

*Renee Newton, a resident located near the project, thanked the applicant for considering to move back to multi-resident dwellings and asked City Council to consider taking the development from 60 ft back down to 35 ft.*

*Joy Cook, a resident located near the project, shared concern for crime, wildlife, water system flooding, schools, pollution, and privacy. Ms. Cook requested that the setback be at least 150 to 200 ft back from the street and with natural vegetation, similar to Integra Woods.*

*George Martins spoke about the reason he bought a home in Palm Coast and was not in favor of multi-family homes.*

*Dennis McDonald asked if there has been any consideration for water and sustainability.*

*Council Member Heighter shared concern for residents in the area and asked that the needs the residents are requesting be considered.*

*Council Member Klufas asked Council Member Heighter to elaborate and asked what would help ensure the integrity of the area.*

*Council Member Heighter suggested moving back the lines of the property and including the buffers.*

*Council Member Klufas asked what the nearest point of an adjacent homes on the South side of Seminole Woods Boulevard is.*

*Mr. Hoover provided a response on setbacks, right of ways, drainage easement, and landscape buffer.*

*Mr. Chiumento provided details of the buffer and intent of the developer.*

*Council Member Pontieri shared comments about Council's decisions, adding density, understanding who the decisions affect, and public interest.*

*City Council held lengthy discussion on potential impacts to the quality of life for residents.*

*Council Member Heighter would like to know the cost of the rental units.*

*Mayor Alfin asked if the concern is that the properties would be at the same market value as the other homes so they would actually be equal to or increase the valuation of the homes.*

*Council Member Heighter shared that her main concern is about what this is going to do to the existing residents that are living in the area.*

*Vice Mayor Danko asked if there is anything that the applicant can do to address some of the concerns before the second reading.*

*Mayor Alfin shared that he is not clear on the specific requests or changes.*

*Council Member Pontieri asked how the project is in the interest of the public.*

*City Council held discussion on growth, median house price, and property values.*

*Jeff Douglas, Douglas Property & Development, provided information on the project and provided response to Council comments.*

*Council Member Pontieri shared concern about the 14,000 units which have been approved by Council thus far and that this is adding to that.*

*Mayor Alfin shared expressed that stating 14,000 units without defining a timeline is irresponsible. Mayor Alfin asked how many years it will take for those units to come online.*

*Council Member Pontieri stated that she will get the exact numbers and bring them back to Council at the next meeting.*

*Council Member Klufas highlighted the discussion and the concessions that have been made to make the setbacks as big as they are. Additionally, Council Member Klufas spoke about Council comments and the importance of sticking to the facts.*

*Mayor Alfin asked Ms. Bevan to direct staff to get together with the group of residents and the developer to address their concerns as specifically as possible.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Klufas**

**Approved - 4 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Cathy Heighter**  
**Denied - 1 - Council Member Theresa Pontieri**

**9. ORDINANCE 2023-XX THE CASCADES REZONING APPLICATION NO. 5107**

*This item was heard with item 8.*

**Pass**

**Motion made to approve by Council Member Klufas and seconded by Vice Mayor Danko**

**Approved - 4 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Cathy Heighter**  
**Denied - 1 - Council Member Theresa Pontieri**

**10. ORDINANCE 2023-XX AMENDMENTS TO THE SPECIAL EVENT ORDINANCE**

*Attorney Borkert read the title into the record.*

*Brittany McDermott, Deputy Director of Parks & Recreation, presented the topic to Council. Ms. McDermott discussed the changes per Council's requests at the September 12, 2023, workshop.*

*Council Member Pontieri commended staff for looking ahead.*

*Mayor Alfin shared appreciation for staff's efforts*

**Pass**

**Motion made to approve by Council Member Pontieri and seconded by Vice Mayor Danko**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heighter**

**J. PRESENTATIONS**

**11. PRESENTATION - 2023 INTRACOASTAL WATERWAY CLEANUP RESULTS**

*This item was heard after the roll call.*

*Jordan Myers, Stormwater Operations Manager, presented the topic to Council.*

*Florida Inland Navigation District (FIND) Commissioner Randy Stapleford shared comments and information about the most unique find.*

*Mayor Alfin asked if can we count on commissioner to work with us next year.*

*Commissioner Stapleford responded absolutely.*

*Mayor Alfin shared closing comments and thanks.*

*Commissioner Stapleford thanked Ms. Myers and staff for their efforts.*

*City Council then moved to item 12.*

## **K. RESOLUTIONS**

### **12. RESOLUTION 2023-97 APPROVING THE 2023 FIND GRANT FOR THE WATERWAY CLEANUP**

*Attorney Borkert read the title into the record.*

*Public Comment:  
There were none.*

*Council Member Pontieri shared thanks and looking forward to next year.*

*City Council then moved to section D. Public Comment on the agenda.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

### **13. RESOLUTION 2023-96 THE LEGACY AT PALM COAST A TECHNICAL SITE PLAN - TIER 3 APPLICATION NO. 5304**

*Attorney Borkert read the title into the record.*

*Phong Nguyen, Senior Planner, presented the topic to Council. Topics presented included: distant aerial, applicant request, Future Land Use Map, zoning map, location, overall site plan, east side enlarged plan, west side enlarged plan, architectural elevations, site development requirements, offsite improvements, five review criteria from the Land Development Code, Planning and Land Development Regulation Board recommendation, next steps, and staff recommendation.*

*Curt Wimpee, representative of Landmark Companies, shared details of the project with City Council.*



*Mayor Alfin asked about the location of the pool.*

*Mr. Wimpee provided a response.*

*Council Member Pontieri spoke about a flexibility study and the reduction of seven parking spots. Council Member Pontieri asked what is taken into consideration when staff makes that determination.*

*Mr. Nguyen shared a response on national standards.*

*Public Comment:  
There were none.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**14. RESOLUTION 2023-95 APPROVING THE RETREAT AT TOWN CENTER PHASE ONE FINAL PLAT**

*Attorney Borkert read the title into the record.*

*Mr. Tyner opened the item.*

*Estelle Lens, Planner, and Dennis Leap, Site Development Manager, presented the topic to Council. Topics presented included: location map, zoning map, future land use map, previous approvals, construction photos, phase one, bond, and recommendation.*

*Public Comment:  
There were none.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**15. RESOLUTION 2023-98 APPROVING AN ENGINEERING CONSTRUCTION CONTRACT WITH HAZEN CONSTRUCTION FOR THE WILLOW WOODS A1A WATER MAIN EXTENSION**

*Attorney Borkert read the title into the record.*

*Alex Blake, Utility Engineer III, provided an overview of the item.*

*Attorney Borkert provided information regarding the grand funds and the City's obligation.*

*Mayor Alfin asked to make sure that as we are building and improving our infrastructure that this is not delaying any other infrastructure concurrency projects that we currently have in the City of Palm Coast.*

*Public Comment:  
There were none.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Klufas**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**L. CONSENT**

*Council Member Pontieri spoke about item 17 and shared about information received from details requested at the September 12, 2023, workshop meeting.*

*Public Comment:  
There were none.*

- 16. RESOLUTION 2023-100 APPROVING THE VACATION OF THE FOLLOWING EASEMENTS FOR THE PROPERTY LOCATED AT 5622 STATE HIGHWAY 100 E, PALM COAST, BEING PARCEL IDS 08-12-31-4300-00000-0010 AND 08-12-31-4300-00000-0020, OWNED BY SKUSA PALM COAST, LLC**
- 17. RESOLUTION 2023-101 APPROVING A CONTRACT WITH AQUATIC MANAGEMENT PLUS, LLC FOR WEED CONTROL OF THE FRESHWATER STORMWATER DRAINAGE SYSTEM**
- 18. RESOLUTION 2023-107 APPROVING ADDITIONAL FUNDING FOR EXPENSES RELATED TO PEAVY GRADE ROADWAY DESIGN AND MAINTENANCE OPERATION CENTER**
- 19. RESOLUTION 2023-102 APPROVING PIGGYBACKING THE CITY OF COCONUT CREEK CONTRACT WITH CITYSCAPE CONSULTING, INC., TO UTILIZE PRICING FOR WIRELESS COMMUNICATION PERMIT REVIEW**
- 20. RESOLUTION 2023-106 APPROVING A MASTER SERVICE AGREEMENT WITH ROADTEK, LLC FOR ASPHALT AND CONCRETE REPAIR SERVICES**
- 21. RESOLUTION 2023-103 APPROVING PIGGYBACKING THE SOURCEWELL STATE OF MINNESOTA CONTRACT WITH WESCO DISTRIBUTION, INC.,**

**(ANIXTER) FOR THE PURCHASE OF MISCELLANEOUS ELECTRICAL SUPPLIES AS NEEDED**

22. **RESOLUTION 2023-105 APPROVING A SOLE SOURCE AGREEMENT WITH EMPIRE PIPE & SUPPLY, INC., FOR THE PURCHASE OF WATER METERS**
23. **RESOLUTION 2023-104 APPROVING A CONTRACT WITH FLORIDA BLUE FOR HEALTH INSURANCE AND STOP LOSS INSURANCE AND TO INCLUDE LIFE AND DISABILITY INSURANCE THROUGH USABLE LIFE (A FLORIDA BLUE PARTNER) FOR CITY EMPLOYEES**

**Pass**

**Motion made to be adopted on consent by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**M. PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

*Dennis McDonald spoke on the topics of water and electric vehicles. Additionally, Mr. McDonald spoke about Attorney Borkert's comments regarding Sunshine Law and suggested that the City ask Mr. Reischmann if the conversation is a violation.*

*Attorney Borkert shared the advice given on the topic.*

*Vice Mayor Danko asked Attorney Borkert if the email was a violation of Sunshine Laws.*

*Attorney Borkert reiterated the question which was presented to her and shared the advice she provided.*

*Vice Mayor Danko asked if the original email that was sent to Council Member Heigher was a violation in Attorney Borkert's opinion.*

*Attorney Borkert provided a lengthy response on the email conversations, the question asked, lack of discussion on the topic, and Ms. Borkert's email advice provided to Mayor Alfin.*

*City Council and Attorney Borkert held discussion on Sunshine Laws.*

*Mayor Alfin discussed an upcoming Council workshop related to ethics and Sunshine Law.*

**N. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**

*Council Member Pontieri shared about the discussions at the joint Cities-County workshop. Topics of discussion included homelessness and Council Member Pontieri asked for consensus for staff to bring this item to a workshop.*

*Council Member Heighter shared that she wants to be positively sure on the Sunshine Laws.*

*Vice Mayor Danko shared about comments received and lack of interest from residents of The Hammock.*

*Council Member Pontieri asked if there is consensus to direct staff. Council concurred. Additionally, Council Member Pontieri shared her discussion efforts with staff and with the County for better utilization of Malacompra without annexation and shared that the next multi-municipality meeting is in January.*

*Mayor Alfin spoke about the funding agreement related to Old Kings Road and asked Council to update City Council to provide an update on what staff has presented.*

*Attorney Borkert provided an update on the Old Kings Road Special Assessment District Committee Meeting and shared that the reduction of scope has been reflected in the budget.*

*Vice Mayor Danko asked how the change is reflected.*

*Ms. Bevan provided a response on the change.*

*Ms. Alves provided information about the final budget hearing and explained how Council can make the budget adjustment.*

*Mr. DeLorenzo shared information about the Special Assessment District Committee and discussions that occurred at the meeting.*

*Mayor Alfin congratulated staff and the City Manager for going the extra mile.*

**O. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**

*There were none.*

**P. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**

*Ms. Bevan highlighted the reporting of emergency and sole source purchases which were attached to the agenda.*

**24. REPORTING OF EMERGENCY AND SOLE SOURCE PURCHASES FOR AUGUST 2023**

**Q. ADJOURNMENT**

*The meeting was adjourned at 12:54 p.m.*

*Respectfully submitted by: Kaley Cook, CMC, FCRM  
City Clerk*



**City of Palm Coast  
Minutes  
CITY COUNCIL BUDGET  
HEARING**

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

***Mayor David Alfin  
Vice Mayor Ed Danko  
Council Member Cathy Heighter  
Council Member Nick Klufas  
Council Member Theresa Pontieri***

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**Wednesday, September 20, 2023**

**5:15 PM**

**CITY HALL**

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**City Staff**

**Denise Bevan, City Manager**

**Neysa Borkert, City Attorney**

**Kaley Cook, 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 and Section 286.26, Florida Statutes, persons needing a reasonable accommodation to participate in any of these proceedings or meeting 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>.
- It is proper meeting etiquette to silence all electronic devices, including cell phones while meeting is in session.
- Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**A. CALL TO ORDER**

*Mayor Alfin called the meeting to order at 5:15 p.m.*

**B. PLEDGE OF ALLEGIANCE TO THE FLAG AND A MOMENT OF SILENCE**

**C. ROLL CALL**

*City Clerk Kaley Cook called the roll. All members were present.*

**D. PUBLIC PARTICIPATION**

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. And pursuant to the City Council's Meeting Policies and Procedures:

- (1) Each speaker shall at the podium, provide their name and may speak for up to 3 minutes.
- (2) The Public may provide comments to the City Council relative to matters not on the agenda at the times indicated in this Agenda. Following any comments from the public, there may be discussion by the City Council.
- (3) When addressing the City Council on specific, enumerated Agenda items, speakers shall:
  - (a) direct all comments to the Mayor;
  - (b) make their comments concise and to the point;
  - (c) not speak more than once on the same subject;
  - (d) not, by speech or otherwise, delay or interrupt the proceedings or the peace of the City Council;
  - (e) obey the orders of the Mayor or the City Council; and
  - (f) not make any irrelevant, impertinent or slanderous comments while addressing the City Council; which pursuant to Council rules, shall be considered disorderly.
- (4) Any person who becomes disorderly or who fails to confine his or her comments to the identified subject or business, shall be cautioned by the Mayor and thereafter must conclude his or her remarks on the subject within the remaining designated time limit.

Any speaker failing to comply, as cautioned, shall be barred from making any additional comments during the meeting and may be removed, as necessary, for the remainder of the meeting.

Members of the public may make comments during the public comment portion of the meeting. Please be advised that public comment will only be permitted during the public comment portions of the agenda at the times indicated by the Chair during the meeting.

*Al Hurley shared about trouble hearing the Council meetings online and also shared concerns about tennis courts and lots of large trucks on road.*

*Vice Mayor Danko shared that he has also heard complaints regarding hearing the meeting.*

## **E. PRESENTATIONS**

### **1 PRESENTATION - FISCAL YEAR 2023-2024 BUDGET**

*Helena Alves, Director of Financial Services, and Gwen Ragsdale, Budget & Procurement Manager, presented the topic to Council. Topics presented included: budget presentation timeline, Fiscal Year 2023 Budget Summary, 5 Year Capital Improvement Plan, Millage Rate Options, Next Steps, and where residents can find additional budget information.*

*Mayor Alfin asked if there is a deadline for the usage of the ARPA Funds.*

*Ms. Alves responded yes and explained that contracts have to be in place by December 31, 2024, and funds have to be expended by December 31, 2026.*

*Vice Mayor Danko asked about a Stormwater Permit for the Old Kings Road project.*

*Mr. Cote provided a response.*

*Ms. Alves explained that this is an opportunity for Council to direct staff to reduce the capital outlay for the specific project discussed on Tuesday and to move those funds to contingency so they can roll into fund balance.*

*Mayor Alfin asked if all Council Members understand the suggestion and if there is a consensus.*

*Vice Mayor Danko asked about the spending of the money and agreement of the committee to do so.*

*Attorney Borkert provided a response that the money has to be spent in accordance with the funding agreement and City Resolution.*

*City Council provided consensus to make the change as described by Ms. Alves.*

*Mayor Alfin shared that the reason that City Council doesn't have any questions is because of the many questions that have been asked over the course of the budget preparation process.*

*Mayor Alfin asked if there has ever been a rollback before.*

*Ms. Alves said that she would need to verify that information.*

*Ms. Bevan explained that it is in the definition of a full rollback versus just a decrease in the millage.*

*City Council held discussion on rollback, full back, and decrease in the millage.*

*Council Member Pontieri spoke about cell coverage and dollars dedicated strictly to emergency communications. Council Member Pontieri asked if we really rely on cell coverage from an agency standpoint when it comes to emergency communications.*

*Chief Berryhill provided a response regarding the communications systems and the automatic vehicle location response utilized by the Palm Coast Fire Department and Flagler County Sheriff's Office.*

*Mayor Alfin asked what happens to the budget after the meeting and when the budget becomes active.*

*Ms. Alves responded that the budget becomes active October 1st.*

*Mayor Alfin asked if the budget gets filed with the State.*

*Ms. Alves provided a response on filing requirements.*

**RECESS CITY COUNCIL AND CONVENE THE SR 100 CORRIDOR CRA BOARD**



*City Council recessed and convened the SR 100 Corridor Redevelopment Agency at 5:37 p.m.*

**F. SR 100 CORRIDOR CRA RESOLUTIONS**

**2 RESOLUTION 2023-108 ADOPTING THE SR 100 CORRIDOR COMMUNITY REDEVELOPMENT AGENCY FINAL BUDGET FOR FISCAL YEAR 2023-2024**

*Attorney Borkert read the title into the record.*

*Mayor Alfin announced that The SR 100 Corridor Community Redevelopment Agency Board hereby proposes to adopt a budget with total appropriated expenditures and reserves of \$2,912,077.*

*Public Comment:  
There were none.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**ADJOURN THE SR 100 CORRIDOR CRA BOARD AND RECONVENE CITY COUNCIL**

*The SR 100 Corridor Redevelopment Agency adjourned at 5:41 p.m. and City Council reconvened.*

**G. CITY RESOLUTIONS**

**3 RESOLUTION 2023-109 ADOPTING THE MILLAGE RATE FOR THE FISCAL YEAR 2023-2024**

*Attorney Borkert read the title into the record.*

*Mayor Alfin announced that the City of Palm Coast proposes to levy a millage rate of 4.2570 mills. This is an increase of 0% from the rolled-back rate of 4.2570 mills.*

*Public Comment:  
There were none.*

*Mayor Alfin announced that the City of Palm Coast proposes to adopt a millage rate of 4.2570 mills.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**4 RESOLUTION 2023-110 ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2023-2024**

*Attorney Borkert read the title into the record.*

*Mayor Alfin announced that the City of Palm Coast proposes to adopt a budget with total appropriated expenditures and reserves of \$357,748,234.*

*Public comment:  
There were none.*

*Mayor Alfin announced that the City of Palm Coast proposes to adopt a budget of \$357,748,234.*

*Mayor Alfin announced that the City Clerk must forward a copy of the resolution adopting the final millage to the Property Appraiser, the Tax Collector, and the State of Florida Department of Revenue within 3 days.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**

**5 RESOLUTION 2023-111 APPROVING THE FISCAL YEAR 2024 FLEET REPLACEMENT/PURCHASE PROGRAM AND ASSOCIATED PURCHASE ORDERS FOR FLEET VEHICLES AND EQUIPMENT AS APPROVED IN THE FISCAL YEAR 2024 BUDGET**

**R20230111**

*Attorney Borkert read the title into the record.*

*Matt Mancill, Director of Public Works, provided an overview of the item.*

*Public Comment:  
There were none.*

**Pass**

**Motion made to approve by Vice Mayor Danko and seconded by Council Member Pontieri**

**Approved - 5 - Mayor David Alfin, Vice Mayor Ed Danko, Council Member Nick Klufas, Council Member Theresa Pontieri, Council Member Cathy Heigher**  
*Mayor Alfin spoke about coming to the end of what was a 6-month process. Mayor Alfin shared that City Council has worked through the good days, the bad days, and every other day in-between, with great energy and great effort. Mayor Alfin asked City Council to applaud City staff who made it possible for City Council to get through this.*

*Council Member Pontieri thanked Ms. Alves and Ms. Bevan.*

*Council Member Heigher shared a final thank you for everyone who participated in helping City Council get to this point.*

*Council Member Klufas shared a thank you to staff for hard work and continued efforts and thanked Council for the clarity and communication.*

**H. PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

*Gene Dowd thanked all first responders, spoke about the two new members who joined Council, and spoke about discussion of last year's budget hearing. Mr. Dowd shared about a lack of attendance at City meetings. Everyone on this staff deserves a thank you from citizens*

**I. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**

*Council Member Pontieri congratulated the Palm Coast Fire Department on winning the fire truck pull at the prior evening's Food Truck Tuesday event. Council Member Pontieri thanked staff for a wonderful event and thanked Advent Health for continuing to raise awareness for breast cancer.*

**J. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**

*There were no comments.*

**K. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**

*City Manager Bevan thanked City Council for the kind words for staff and for making this a successful budget preparation and adoption.*

**L. ADJOURNMENT**

*The meeting was adjourned at 5:53 p.m.*

*Respectfully submitted by: Kaley Cook, CMC, FCRM  
City Clerk*

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> CITY ADMINISTRATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> PROCLAMATION - THE WEEK OF OCTOBER 2, 2023, AS CUSTOMER SERVICE WEEK	
<b>Presenter:</b> Mayor and City Council	
<b>Attachments:</b> 1. Proclamation	
<b>Background:</b> The City of Palm Coast would like to proclaim the week of October 2, 2023, as Customer Service Week.	
<b>Recommended Action:</b> <b>PROCLAIM THE WEEK OF OCTOBER 2, 2023, AS CUSTOMER SERVICE WEEK</b>	



## PROCLAMATION

**WHEREAS**, our businesses and government systems, both locally and across this nation, recognize that making a strong commitment to exemplary customer service builds the trust of our customers and clients; and

**WHEREAS**, businesses and governments whose professional service representatives understand and anticipate the needs and expectations of their customers by showing commitment to regularly exceeding the customer's expectations; and

**WHEREAS**, the City of Palm Coast's Customer Service Division consistently makes a difference in the lives of the residents of the City by committing to the highest standards of service every day and routinely improving services to citizens through innovative and considerate means; and

**WHEREAS**, Palm Coast residents have come to rely heavily on the knowledgeable and friendly exchange of information with the City's Customer Service Representatives over the past eighteen years, addressing an average of 130,000 inquiries annually on a variety of City related matters; and

**WHEREAS**, since 1992, the United States Congress established the first full week of every October to recognize customer service professionals who serve daily on the front lines.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Mayor and the City Council of the City of Palm Coast, Florida, that week of October 2, 2023, be officially designated as:

## CUSTOMER SERVICE WEEK

and encourage all citizens to acknowledge the contributions Customer Service professionals make to this community by providing valuable information and services with thoughtfulness and compassion.

**SIGNED** this 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
Kaley Cook, City Clerk

\_\_\_\_\_  
David Alfin, Mayor

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> CITY ADMINISTRATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> PROCLAMATION - OCTOBER 3, 2023, AS FIRE POLICE RECOGNITION DAY	
<b>Presenter:</b> Mayor and City Council	
<b>Attachments:</b> 1. Proclamation	
<b>Background:</b> The City of Palm Coast would like to proclaim October 3, 2023, as Fire Police Recognition Day.	
<b>Recommended Action:</b> <b>PROCLAIM OCTOBER 3, 2023, AS FIRE POLICE RECOGNITION DAY</b>	



## PROCLAMATION

**WHEREAS**, the City of Palm Coast is committed to the safety and well-being of its residents and visitors; and

**WHEREAS**, the first Fire Police program was established on August 20, 1975.; and

**WHEREAS**, the Fire Police are an essential component of the public safety infrastructure, working diligently to ensure the protection of life, property, and the environment; and

**WHEREAS**, the Fire Police serve as a critical support unit, assisting both the fire department and the Sheriff's Office in emergency response situations; and

**WHEREAS**, the Fire Police are highly trained individuals who play a vital role in traffic control, crowd management, scene security, and other crucial functions during emergencies, fires, accidents, and public events; and

**WHEREAS**, the dedication, expertise, and tireless commitment of the Fire Police are instrumental in maintaining order, safety, and coordination at the scenes of emergencies, ensuring the smooth operation of response efforts; and

**WHEREAS**, the Fire Police demonstrate unwavering dedication to the residents and visitors of the City of Palm Coast, often working under challenging and high-stress conditions.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Mayor and the City Council of the City of Palm Coast, Florida, that October 3<sup>rd</sup> 2023, be officially designated as:

## FIRE POLICE RECOGNITION DAY

in the City of Palm Coast and encourage all residents to join in expressing our gratitude to the Fire Police for their selfless service, unwavering dedication, and commitment to the safety and well-being of our community.

**SIGNED** this 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
Kaley Cook, City Clerk

\_\_\_\_\_  
David Alfin, Mayor

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> PUBLIC SAFETY <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> PROCLAMATION - THE WEEK OF OCTOBER 8, 2023, AS FIRE PREVENTION WEEK	
<b>Presenter:</b> Mayor and City Council	
<b>Attachments:</b> 1. Proclamation	
<b>Background:</b> The City of Palm Coast would like to proclaim the week of October 8, 2023, as Fire Prevention Week.	
<b>Recommended Action:</b> <b>PROCLAIM THE WEEK OF OCTOBER 8, 2023 AS FIRE PREVENTION WEEK</b>	





## PROCLAMATION

**WHEREAS**, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

**WHEREAS**, Palm Coast is committed to ensuring the safety and security of all those living in and visiting our community; and

**WHEREAS**, Palm Coast residents should identify places in their home where fires can start and eliminate those hazards, making their homes safer; and

**WHEREAS**, the 2023 Fire Prevention Week theme, "Prevent Kitchen Fires," effectively serves to remind us that cooking is the leading cause of home fires and home fire injuries; and

**WHEREAS**, Palm Coast residents should plan and practice escape from their home in the event of a fire, ensuring that all family members know the escape routes; and

**WHEREAS**, Palm Coast residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

**WHEREAS**, Palm Coast's first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

**WHEREAS**, Palm Coast residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Mayor and the City Council of the City of Palm Coast, Florida, that the week of October 8, 2023, be officially designated as:

## FIRE PREVENTION WEEK

and encourage the residents of Palm Coast to participate in fire prevention activities at home, work, and school, and to support the many public safety activities and efforts of Palm Coast's fire and emergency services during Fire Prevention Week 2023.

**SIGNED** this 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
Kaley Cook, City Clerk

\_\_\_\_\_  
David Alfin, Mayor

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> CITY ADMINISTRATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> PROCLAMATION - OCTOBER 2023 AS WHITE CANE AWARENESS MONTH	
<b>Presenter:</b> Mayor and City Council	
<b>Attachments:</b> 1. Proclamation	
<b>Background:</b> The City of Palm Coast would like to proclaim October 2023 as White Cane Awareness Month.	
<b>Recommended Action:</b> <b>PROCLAIM OCTOBER 2023 AS WHITE CANE AWARENESS MONTH</b>	



## PROCLAMATION

**WHEREAS**, the white cane, which every blind citizen of Palm Coast Florida has the right to carry, demonstrates and symbolizes the ability to achieve a full and independent life and the capacity to work productively in competitive employment; and

**WHEREAS**, the white cane, by allowing every blind person to move freely and safely from place to place, makes it possible for the blind to fully participate in and contribute to our society and to live the lives they want; and

**WHEREAS**, every citizen should be aware that the law requires that motorists and cyclists exercise appropriate caution when approaching a blind person carrying a white cane; and

**WHEREAS**, Palm Coast and Florida law also calls upon employers, both public and private, to be aware of and utilize the employment skills of our blind citizens by recognizing their worth as individuals and their productive capacities; and

**WHEREAS**, Palm Coast, through its public agencies and with the cooperative assistance of the Flagler Palm Coast Visually Impaired Support Group can and should facilitate the expansion of employment opportunities for and greater acceptance of blind persons in the competitive labor market.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Mayor and the City Council of the City of Palm Coast, Florida, that October 2023, be officially designated as:

## WHITE CANE AWARENESS MONTH

in Palm Coast Florida and do call upon our schools to offer full opportunities for training to blind persons; upon employers and the public to utilize the available skills of competent blind persons and to open new opportunities for the blind in our rapidly changing society; and upon all citizens to recognize the white cane as a tool of independence for blind pedestrians on our streets and highways.

**SIGNED** this 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
Kaley Cook, City Clerk

\_\_\_\_\_  
David Alfin, Mayor

## City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	COMMUNICATIONS AND MARKETING	<b>Amount</b>
<b>Division</b>		<b>Account #</b>
<b>Subject:</b> PRESENTATION - PHOTO CONTEST WINNERS & AWARDS		
<b>Presenter:</b> Brittany Kershaw, Director of Communications		
<b>Attachments:</b>		
<p><b>Background:</b>            The Communications &amp; Marketing Department hosts an annual photo contest where residents can enter to win prizes. This year's categories were Pets, Recreation, Nature, Events, and Residents.</p> <p>All photos must be taken inside the city limits of Palm Coast. Residents may submit up to 20 entries.</p> <p>One winner per category is selected and honored at a City Council business meeting. The photographs submitted for the contest are then used by the city for marketing, promotional, and public relations purposes.</p>		
<b>Recommended Action:</b> <b>FOR PRESENTATION ONLY</b>		



# Background



- The Annual Photo Contest, a popular event since 2008, fosters community engagement and participation.
- It takes place every summer during June and July.
- The contest selects specific categories designed to generate local art for year-round city marketing.
- More than 900 photo submissions this year showcasing Palm Coast's people, landscapes, and lifestyle.
- Participants could submit up to 20 photos each, with six chances to win the coveted "Category Winner" grand prize.

# Categories



1- Pets

2- Recreation

3- Residents

4- Wildlife

5- Landscape

6- Events

# Pets Category



**1st Place**

"Cozy Kitten"

by: Lori Earley

**Congrats!**



# Recreation Category



## 1st Place

"Early Rowing Practice"  
by: Lori Vetter Bowers

## Congrats!



# Residents Category



**1st Place**

“Ducking Around”

by: Courtney MacDonald

**Congrats!**

# Wildlife Category



**1st Place**

"Young Alligator"

by: Amy Skursky

**Congrats!**



# Landscape Category



**1st Place**

"Matanzas Woods  
Sunset"

by: Stacey Schottery

**Congrats!**

# Events Category



**1st Place**

“Touch-a-Truck  
Bucket of Fun”

by: Amy Gagliano

**Congrats!**





# Congratulations

& Thank you to all Participants.  
See you Next Year!



# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> PARKS & RECREATION	<b>Amount</b>
<b>Division</b>	<b>Account #</b>
<b>Subject:</b> ORDINANCE 2023-XX AMENDMENTS TO THE SPECIAL EVENT ORDINANCE	
<b>Presenter:</b> Brittany McDermott, Deputy Director of Parks & Recreation and Jared Dawson, Recreation Coordinator	
<b>Attachments:</b> 1. Presentation 2. Ordinance	
<b>Background:</b>  <b>Strategic Action Plan Pillars of Priorities:</b> <b>Safe &amp; Reliable Services: A safe community for all is the catalyst to ensure that residents and regional visitors enjoy quality amenities year-round.</b>  <b><u>UPDATED BACKGROUND FROM THE SEPTEMBER 19, 2023, BUSINESS MEETING:</u></b> City Council heard the first reading of this item at their September 19, 2023, Business Meeting. There have been no changes to the item since the first reading.  <b><u>UPDATED BACKGROUND FROM THE SEPTEMBER 12, 2023, WORKSHOP MEETING:</u></b> This item was presented to City Council at the September 12, 2023, Workshop Meeting. City Council requested changes to the Ordinance which are reflected in the redline Ordinance attached to this item.  <b><u>ORIGINAL BACKGROUND FROM THE SEPTEMBER 12, 2023, WORKSHOP MEETING:</u></b> On February 2, 2010, City Council adopted the Special Event Ordinance 2010-01 with the primary objective of safeguarding and promoting the health, welfare, and safety of both the citizens and visitors within the City.  In 2019, the Special Events Review Team (SERT) initiated the process to update the ordinance, aiming to establish clearer and precise verbiage to effectively communicate the provisions and requirements outlined. The 2019 draft was reviewed and approved by legal. However, due to the unforeseen circumstances surrounding the pandemic, it was put on hold for presentation to Council.  Currently, in 2023, SERT has revisited the ordinance and has incorporated additional revisions to the 2019 draft, focusing on clarity and removing outdated regulations. These revisions have also undergone legal review and approval. These amendments to the ordinance align with the key priority of "Safe & Reliable Services." By continuously refining and improving the ordinance, the City demonstrates its unwavering commitment to ensuring the safety and well-being of both its community members and visitors.	
<b>Recommended Action:</b> <b>ADOPT ORDINANCE 2023-XX AMENDMENTS TO THE SPECIAL EVENT ORDINANCE</b>	



# **Special Event Ordinance**



# Background

An ordinance for special events was approved by City Council in 2010 (ordinance #2010-01).

- Support events both internal and external
- To protect and promote the health, welfare, and safety of the citizens of and visitors to the City of Palm Coast



# Special Event Review Team (SERT)

Comprised of representatives from City departments:

- Parks & Recreation
- Public Works
- Fire
- Community Development

As well as representatives of the Flagler County Sheriff's Office



# Timeline



- Sept. 12 - City Council Workshop Meeting
- Sept. 19 - City Council Business Meeting (First Read)



# Summary of Proposed Changes



- Add a definition for community event
- Clarify special event process
- Expand parade route options
- Add farmers market chapter
- Expand on site plan requirements
- Add event disclosure and exemptions



**Questions?**



**ORDINANCE 2023-\_\_**  
**AMENDING ORDINANCE 2010-01**  
**SPECIAL EVENT ORDINANCE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING THE CITY OF PALM COAST CODE OF ORDINANCES, CHAPTER 28, ARTICLE II, SPECIAL EVENTS; PROVIDING CITY MANAGER AUTHORIZATION TO IMPLEMENT, PROVIDING FOR CODIFICATION, SERVERABILITY, CONFLICTS AND AN EFFECTIVE DATE**

**WHEREAS**, Chapter 166 of the *Florida Statutes* includes authority to adopt ordinances to protect the health, safety, and welfare, and in the interest of the citizens of the City; and

**WHEREAS**, the City Council recognizes that special events offered to the general public often attracts a large gathering of people which may cause adverse public health and safety conditions which require municipal regulation to ensure public safety and health; and

**WHEREAS**, the City Council desires to amend the Special Event Ordinance to protect and promote the health, safety, and welfare, in the interest of the citizens of and visitors to the City; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strike through~~ shall constitute deletions to the original text.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. SPECIAL EVENTS AMENDMENT.** The City Council of the City of Palm Coast hereby amends Chapter 28, Article II. Special Events of the *City of Palm Coast Code of Ordinances* to read as follows:

***ARTICLE II. SPECIAL EVENTS***

**Sec. 28-32. Definitions**

**[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]**

*Community Event* shall mean a not-for-profit event organized by the City for the benefit of the community.

*Event* shall mean a gathering, demonstration, Parade, or activity that is likely to attract a crowd within the boundaries of the City of Palm Coast.

*Event Organizer* shall mean the individual, organization, or entity which schedules an Event and runs the Event from start to finish.

*Exhibitor* shall mean an individual, organization or entity who provides informational materials and/or samples, other than food or beverages, at no cost, during the course of an Event.

*Parade* shall mean a preplanned procession of people and/or vehicles traveling in unison on any street within the boundaries of the City of Palm Coast in a manner that does not comply with normal or usual traffic regulations or controls.

*Special Event* shall mean a preplanned Event that is expected to draw 500 or more persons at any time during the Event as participants or spectators; is expected to draw fewer than 500 persons but may still require City services, other governmental services, or road closures depending on the type of event; may involve the serving of alcohol; may involve the use of pyrotechnics; may include other risk factors as set forth in section 28-43 herein; or may otherwise be deemed a Special Event by the City Manager.

*Special Event Organizer* shall mean an Event Organizer for a Special Event.  
*Special Event Permit* shall mean a permit issued by the City allowing a Special Event Organizer to hold a Special Event. Special Event Permits are specific to a particular Special Event and are nontransferable.

*Special Event Review Team (SERT)* shall mean a committee composed of representatives of the City's Parks & Recreation Department, Public Works Department, Fire Department, and Community Development Department, as well as representatives of the Flagler County Sheriff's Office and other members appointed by the City Manager.

*Temporary Vendors Permit* shall mean a permit issued to non-resident Vendors by the City of Palm Coast allowing Vendors to participate in one specific Special Event. Temporary Vendors Permits are nontransferable and a maximum of three (3) can be issued to the Vendor in a calendar year.

*Vendor* shall mean an individual or entity offering to distribute or sell goods, including food and beverages, or provide services at a Special Event.

**Sec. 28-33. - Event Disclosure.**

- (a) Unless the Event falls within the exemptions set forth in subsection (d) of this section, or it is determined that the request does not meet the definition of an Event as set forth in this Ordinance, all Event Organizers planning to hold an Event are required to

disclose the Event to the City at least one hundred eighty (180) days prior to the Event date. Event Organizers may request a waiver from the one hundred and eighty (180) Event disclosure requirement if the Event is recurring and has an approved site plan on file with the City and there are no substantial deviations from that site plan, or after review and written approval by SERT.

- (b) The information submitted to the City with the Event Request Form must at a minimum include: the Event date(s), time(s), and location; whether alcohol will be served at the Event; an estimated number of Event attendees; and any other information the Event Organizer deems pertinent to the City's evaluation of the event, based upon the criteria in this Article. The Event Organizer's estimate of Event attendees must include the Event Organizer's best estimate of the probable attendance and number of participants at the Event. The attendance estimate must be based upon all the relevant factors known at the time, including, without limitation, past attendance at similar events hosting the same or similar performers both in the City and in comparable communities, and the extent of advertising and promotion contemplated. Should projected attendance of the Event greater than or equal to 500 attendees, a Special Event Permit is required. Should projected attendance of the Event be below 500 attendees, a Special Event Permit may still be required if the risk factors described in Sections 28-43 of this Article exist.
- (c) Upon receipt of the event form, the City shall make a determination as to whether the Event is a Special Event. Upon determination that the Event is a Special Event, the Special Event Organizer shall be responsible for complying with Sections 28-34, 28-36, 28-37, 28-38, 28-39, 28-41, 28-43, 28-45 and 28-46 of this Article.
- (d) Exemptions from Event disclosure.

The following Events are not required to submit an Event Request Form to the City:

- (1) Events hosted at a venues designed for large gatherings, such as sporting events at designated fields/arenas/stadiums or musical/theatrical productions at any auditorium, and which do not exceed the parking criteria or fire occupancy of the venue, are exempt from submitting an Event Request Form to the City and are not otherwise governed by this Special Events Ordinance.
- (2) Events held on property owned or leased by any federal or state governmental entity are exempt from the disclosure requirement and are not otherwise governed by this Special Events Ordinance.

**Sec. 28-34. - Special Event Permit Review.**

- (a) All Events meeting the definition of a Special Event or as determined by the City Manager require a Special Event Permit.
- (b) Upon City's request, the Special Event Organizer shall attend a preliminary SERT meeting and shall provide information necessary to determine whether the issuance of a



Special Event Permit is appropriate. A determination will be made following the preliminary SERT meeting. If the event is determined to be a Special Event, a follow up SERT meeting will be required and scheduled by the SERT team. Additional follow-up meetings may be required depending on the size and scope of a Special Event, such as if there are potential risk factors that may be apparent in the application as identified in Section 28-43. If attendance at a SERT meeting is not required, information may still be requested from the Event Organizer in order for SERT and the City to conduct an internal administrative review prior to the issuance of a Special Event Permit.

- (c) Information requested may include but is not limited to: the estimated attendance numbers, time and place of the Event; whether alcohol will be served; a site plan including but not limited to event layout, traffic flow and parking; any anticipated road closures; and whether City and/or other governmental services will be needed at the Event. To ensure that the public health, welfare, and safety are protected, Special Event Organizers shall comply with all relevant City codes, including this Ordinance, all applicable State and Federal laws, the Florida Building Code, and the Fire Prevention Code. The City will complete its review of the Special Event Permit application and shall approve or deny the Special Event Permit accordingly. All Special Event Permits shall include conditions relating to the specifics of the Event designed to ensure that the health, safety, and welfare of the public is protected before, during, and after the Event. SERT shall have the authority to create and impose all permit conditions.
- (d) The Special Event Organizer shall provide SERT with: the names of all persons or groups who will perform at the Special Event; a list of all Vendors and Exhibitors; and all persons or groups who will furnish or provide rides, mechanical entertainment, or amusement devices. Mechanical amusement devices shall comply with the requirements of Chapter 5F-8, Florida Administrative Code.
- (e) The Special Event Organizer will provide sign information as outlined in Chapter 12 of the Unified Land Development Code.
- (f) The Special Event Organizer shall submit a nonrefundable application fee to help defray the City's cost of processing the application and coordinating the relevant City services and personnel.
- (g) Special Events will not be permitted on any property in a residential zoning district, as per Section 3.02.01 of the Unified Land Development Code, or in the residential component of any Master Planned Development (MPD) Zoning District(s).

**Sec. 28-35. - Parades.**

Parades are considered Special Events and must go through the SERT process and receive a Special Event Permit prior to the Parade. All Parades shall have the route verified and approved for feasibility and safety during the review process. Certain routes are prohibited, including, but not limited to, routes along Florida Park Drive and Old Kings Road.

**Sec. 28-36. – Special Event Organizer Indemnification.**

- (a) The Special Event Organizer shall assume full responsibility and liability for and shall agree in writing to indemnify, defend, and hold the City harmless against all liability, claims for damages, and suits for or by reason of any injury to any person, including death, and damage to any property, arising out of or in connection with the Special Event.

**Sec. 28-37. – Special Event Organizer Insurance Requirements.**

- (a) The Special Event Organizer shall be required to provide to the City proof of insurance, covering the period of the Special Event, within ten (10) business days after approval of a Special Event Permit for the following types and amounts of insurance:

- (1) Commercial General Liability Insurance (including property damage, products/completed operations aggregate, premises, operations and blanket contractual liability:

\$1,000,000 each occurrence and \$2,000,000 General Aggregate

The City of Palm Coast shall be named additional insured under the above Commercial General Liability coverage.

- (2) In the event that motor vehicles are used by the Special Event Organizer for any activity associated with the Special Event, Automobile Liability (all automobiles, owned, hired, or non-owned):

\$1,000,000 Combined Single Limit

- (3) In the event that the Special Event Organizer will have employees working on or at the Special Event, Workers Compensation insurance or exemption as required by Florida Workers Compensation Law as defined in Florida Statutes Chapter 440, including evidence of employer's liability insurance for the following minimum limits of coverage:

\$100,000 Each Accident \$100,000 Disease-Each Employee \$500,000 Disease-Policy Limit

- (4) Such insurance will include coverage for appropriate Federal Acts (Longshore and Harbor Workers Compensation Act, 33 USC §§ 901-952, and the Jones Act, 46 USC § 688 et seq.) where activities include liability exposures for events or occurrences covered by these statutes. The applicant shall grant the City a waiver of subrogation in favor of the City.

- (5) Additional riders in the amount of \$1,000,000.00 may be required to include, but not be limited to, the following: Liquor Liability, Professional Liability (Errors and Omissions), Aircraft Liability (Bodily Injury and Property Damage including

passengers), Watercraft Liability, Sexual Molestation Liability, and Assault and Battery.

- (6) In the event that one or more cranes or similar heavy equipment pieces are used for any activity associated with the Special Event, the proof of insurance will clearly demonstrate that the general liability coverage includes coverage for such equipment and has no limitation specific to use of the equipment.
  - (7) In the event that fireworks displays or pyrotechnic displays are included in the Special Event, the proof of insurance will clearly demonstrate that general liability coverage as defined in subsection (a) of this section is provided to include coverage for such display(s) with no limitation specific to the display(s). Such evidence must be provided by the organization(s) responsible for such display(s).
- (b) An insurer holding a current certificate of authority pursuant to Florida Statutes Chapter 624 must prepare the insurance. All insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City.
  - (c) No material alteration or cancellation, including expiration and nonrenewal, shall be effective until fifteen (15) days following receipt of written notice by the City.
  - (d) All required coverages shall be in effect during the period of the Special Event and are to be provided on an occurrence form. In the event that coverage is only available on a claim form, the insured shall agree to maintain extended reporting coverage for a minimum of two (2) years past the expiration of the annual policy term. Failure to have current coverage shall be grounds for revocation of the Special Event Permit.
  - (e) State and federal agencies eligible for sovereign immunity as evidenced by the applicable state or federal statutes may submit a statement of self-insurance and liability as allowed by the applicable state or federal statute. Such statement will be acceptable in place of insurance requirements defined herein.
  - (f) The Special Event Organizer may be required to provide additional types of coverage and/or greater or lesser amounts of coverage if, according to recognized insurance and risk management industry standards, the modification is reasonable under the circumstances. The City shall state the reasons for any adjustment in writing.

**Sec. 28-38. - Special Event Vendor/Exhibitor Requirements.**

- (a) The Special Event Organizer shall ensure that all Vendors and Exhibitors connected with the Special Event comply with the following:
  - (1) All local Vendors shall possess a current City Local Business Tax Receipt.
  - (2) All other Vendors shall each submit a special event application and purchase a Temporary Vendors Permit from the City.

- (3) Vendors of food shall have all applicable licenses to be considered for participation in a Special Event. It is the responsibility of the Special Event Organizer to ensure that participating food Vendors comply with the rules and regulations of the State of Florida Health Department and the regulations of any other governmental entity regulating food distributors.
- (4) All food Vendors who do not have a Florida Department of Business and Professional Regulation (DBPR) annual food vendor's license shall apply for and purchase a DBPR temporary event license in order to participate in the Special Event.
- (5) All Vendors shall, in writing, release, discharge, indemnify and hold the City harmless against all liability, claims for damages, and suits for or by reason of any injury to any person, including death, and damage to any property, connected to the Vendor's participation in the Special Event.
- (6) All Vendors shall complete and sign the applicable Risk Related Vendor Event Participant Application and Agreement Form, and if applicable, the Vendor shall provide proof of insurance that complies with the insurance requirements as set forth in the agreement.
- (7) All Exhibitors shall complete and sign the Participation Application and Agreement Form.
- (8) All special event applications shall be submitted thirty (30) days prior to the Event date.

**Sec. 28-39. - Issuance of Special Event Permit; Grounds For Denial; Appeals.**

- (a) Upon submission and approval of the items and information required by sections 28-34, 28-37, and 28-38, SERT shall issue the Special Events Permit.
- (b) A Special Event Permit may be denied only if:
  - (1) The Special Event Organizer has made any false material representation in the information provided to the City related to the Special Event.
  - (2) The Special Event Organizer fails to provide any of the items or information required by this article.
  - (3) The Special Event will substantially interfere with any other Special Event for which a permit has already been granted, or with the provision of public safety or other City services in support of such other previously scheduled events, or will have a non-mitigable adverse impact upon residential or business access and traffic circulation in the area in which it is to be conducted.

- (4) The Special Event Organizer failed to comply with requirements from a previous Event or Special Event, such as sign requirements, vendor requirements, or violations of federal, state, and local codes and regulations.
  - (5) The conduct of the Special Event will substantially interrupt the safe and orderly movement of aerial or marine navigation, or of public transportation or other vehicular and pedestrian traffic in the area of the Special Event; or will cause irresolvable conflict with construction or development in public rights-of-way or at the public facility where the Special Event is held so as to cause unsafe conditions for the public; or the expected attendance at the Special Event will exceed the lawful capacity of the facility under the City's Fire Code; or the parking available at the facility will be inadequate to accommodate the expected attendance at the Special Event.
- (c) If a permit is denied, SERT shall issue a written notice to the Special Event Organizer giving the reason(s) for denial. Within five (5) business days after issuance of the denial, the Special Event Organizer may appeal the denial to the City Manager for a final decision, by filing a written petition with the City Clerk detailing the grounds for appeal. Appeals shall be considered by the City Manager within five (5) business days of submission of the petition to the City Clerk and the City Manager shall issue a written final determination to the Special Event Organizer.
- (d) In the event that a Special Event Organizer alleges that a permit denial is a First Amendment prior restraint, and any appeal under this section is denied, the Special Event Organizer can appeal, by filing a request within five (5) business days from issuance of the denial directly to the City Council, to be heard at their next available regular meeting. The Special Event Organizer may then appeal to the appropriate court.
- (e) Until all appeals are complete, the permit denial will continue in effect so as to preserve the status quo.

**Sec. 28-40. - Use of Alcoholic Beverages.**

The Special Event Organizer shall comply with all applicable requirements of State beverage laws and City Codes if alcohol is to be served at the Special Event.

**Sec. 28-41. - Revocation Or Suspension Of Permit.**

The City Manager, after consultation with the Sheriff, Fire Chief, Risk Manager, Building Official, Code Enforcement Manager, and Public Works Director, or their designees, may summarily suspend or revoke a Special Event Permit issued under this section for (i) violation of this Ordinance; (ii) violating any other Federal, State, or Local laws or ordinances, or the conditions of the Special Event Permit during or otherwise related to the Special Event; or (iii) making any material false representation to the City concerning the Special Event. In the event of suspension or revocation, the appeal provisions in subsection

28-40(c) shall apply. The five (5) business day appeal period shall commence from the date the suspension or revocation notice is issued by the City.

**Sec. 28-42. - Public Safety At Special Events.**

(a) The following requirements for public safety will be observed at all Special Events:

- (1) Security - If SERT determines that security is required, the Flagler County Sheriff's Office shall be the primary provider of security at Special Events. The number of required safety personnel shall be based on event risk factors set forth in section 28-43. If the Special Event Organizer wishes to use private sector entities for personal safety or property security at Special Events, such entities will be in addition to the services provided by the Sheriff.
- (2) Fire - Fire protection services shall be provided by the City of Palm Coast Fire Department. Fire codes and standards compliance will be verified by the City Fire Marshal to ensure the Special Event complies with Florida Fire Prevention Code, NFPA 1, NFPA 101 Life Safety Code.
- (3) Medical - Special Event Organizers may be required to provide emergency medical services, including transportation, if the Fire Chief finds a need for these services based on event risk factors described in section 28-43. In the event that the City Fire Department determines that it is unable to provide any aspect of emergency medical services, including transportation, such services may be provided by Flagler County.
- (4) The Special Event Organizer must maintain adequate handicap parking in compliance with ADA (Americans with Disabilities Act) thresholds as to the number of spaces required and surface requirement. Existing handicap spaces must be utilized for their intended purpose.
- (5) SERT may allow overflow parking for a Special Event on the public right-of-way, as long as safe pedestrian access to the Special Event is provided. Any overflow parking that is allowed on the right-of-way or on public or private property may require improvements at the Special Event Organizer's expense.

**Sec. 28-43. - Event Risk Factors.**

Event risk factors include the number of projected attendees, service of alcoholic beverages, excessive movement of people or vehicles within or in close proximity to the Event, and/or any Event that includes safety risks such as mosh pits, concerts, or any events using pyrotechnics, explosives, and stunts with special rescue potentials, or other similar activities which may result in physical stress or injury. Special Events with few risk factors, will require fewer public safety personnel.

**Sec. 28-44. - Costs For City Services At Special Events.**

The Special Event Organizer shall be responsible for costs the City incurs for any City personnel necessary for public safety, set up, maintenance, and clean up related to the event. The fees for City services at Special Events shall be established by resolution of the City Council.

**Sec. 28-45. - Standards For Sanitary Facilities.**

The Special Event Organizer shall provide sanitary facilities in the form of toilets and hand washing stations, based on the projected number of attendees and participants, in a proportion of two restroom facilities to every 250 attendees/participants. Restrooms shall be maintained in a sanitary condition, and shall be serviced at least once daily. Out of the total number of restrooms, at least one must be handicap accessible and a minimum of five percent of the available restrooms must be handicap accessible. Hand washing facilities shall be provided in a proportion of one hand wash facility to every ten portable restrooms and must be provided at any Special Event where food is served or picnic areas are provided.

**Section 28-46. Farmers Markets(s).**

1. Definition of a Farmers Market:

*A temporary outdoor multi-stall market where local farmers sell locally grown agricultural products directly to the public at a central or fixed location. Selling fresh fruit and vegetables (but also include meat products, dairy products, and/or grains), and goods produced from products on the farm.*

2. Private farmers markets shall be permitted to operate upon approval of a special event permit in all commercial zoning districts. Additionally, farmers markets are permitted in a Commercial MPD (with the approval of the Owner and property association). Farmers Markets are not permitted within the Palm Coast Parkway and Gateway overlay zones.
3. Permits may be applied for quarterly and would cover a once per month (3 consecutive days) farmer's market event if in compliance with the special event code, Section Sections 28-34, 28-36, 28-37, 28-38, 28-39, 28-41, 28-43, 28-45 and 28-46 of this Article, as well as special event policy and procedures imposed by Special Event Review Team (SERT).
4. A maximum of two private farmers markets may be permitted to operate at the same time in different locations by different organizers with approval from City of Palm Coast Land Use Administrator.
5. No person shall vend fresh fruits, vegetables, or other produce or operate a farmers market without a valid Agricultural Dealer's License issued by the state department of agriculture and consumer services.
6. The owner or operator of the farmers market must obtain a notarized letter from the property and the business owner stating that the market can be operated on the

property. Proof of liability insurance will be required meeting limits set forth in the special event code .

7. Fresh fruits, vegetables or other consumables shall be confined to tables that are at least 3 feet above the ground and must provide sanitary health conditions for customers.
8. Conveniently located toilet facilities, including a hand wash lavatory with hot and cold water, and parking shall be available for market vendors and patrons. Location of such facilities shall be determined on a case-by-case basis, including review by the Flagler County Sheriff's Office and City of Palm Coast's planning and zoning, public works and building departments.
9. Vendors may arrive one hour prior for set-up and may remain one hour after for break-down. All vendors participating must be permitted through the farmers market operator. The owner or operator of the market is responsible for maintaining current license verification for all vendors quarterly and providing that verification to the City business tax department. No vendors may be added once list is approved.
10. All trash, refuse and garbage must be removed from the site at the end of each day. The premises occupied by the farmers market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All discarded fresh fruits, vegetables or other produce will be removed by the vendor.
11. Farmers Market Cottage food items, food from mobile food vendors, local fruit, vegetables, flowers, seedlings, and plants may be sold at the Farmers Market provided that the product is produced, processed or manufactured in an establishment licensed by the department of agriculture and/or the department of business and professional regulation. Vendors must provide proof of their current licenses to the Local Business Tax Department to obtain their Business Tax Receipt; vendors with a temporary vendors permit will not be allowed to participate.
12. No more than 2 of the same type of vendor will be permitted to participate in a Farmers Market.
13. Crafts, souvenirs, and antiques are just a few of the items that cannot be sold at the Farmers Market.
14. The sale of the following items is prohibited: live animals, alcoholic beverages and/or any food processed, packed, or prepared at a home or other source not approved by federal, state, or county health authorities or inspected by federal, state or county health authorities.
15. Only one banner sign shall be permitted on site (not in right of way) and limited to 16 square feet in size on 48-inch-high stakes with property owner's permission. Banners are allowed on site two hours before the event and removed two hours after the event.



**SECTION 3. AUTHORIZATION TO IMPLEMENT.** The City Manager, or designee, is hereby authorized to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes, and rules.

**SECTION 4. CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made part of the City of Palm Coast Code of Ordinances and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word “Ordinance”, or similar words, may be changed to “Section,” “Article”, or other appropriate word; provided, however, that Sections \_\_\_\_ shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION 5. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Code 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 Ordinance.

**SECTION 6. CONFLICTS.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

**APPROVED** on first reading this 19<sup>th</sup> day of September 2023

**ADOPTED** on second reading after due public notice and hearing City of Palm Coast this 3<sup>rd</sup> day of October 2023

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A – Special Event Ordinance Amendment

**ORDINANCE 2023-\_\_**  
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**SPECIAL EVENT ORDINANCE**

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**WHEREAS**, the City Council recognizes that special events offered to the general public often attracts a large gathering of people which may cause adverse public health and safety conditions which require municipal regulation to ensure public safety and health; and

**WHEREAS**, the City Council desires to amend the Special Event Ordinance to protect and promote the health, safety, and welfare, in the interest of the citizens of and visitors to the City; and

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- (a) Unless the Event falls within the exemptions set forth in subsection (d) of this section, or it is determined that the request does not meet the definition of an Event as set forth in this Ordinance, all Event Organizers planning to hold an Event are required to

disclose the Event to the City at least one hundred eighty (180) days prior to the Event date. Event Organizers may request a waiver from the one hundred and eighty (180) Event disclosure requirement if the Event is recurring and has an approved site plan on file with the City and there are no substantial deviations from that site plan, or after review and written approval by SERT.

- (b) The information submitted to the City with the Event Request Form must at a minimum include: the Event date(s), time(s), and location; whether alcohol will be served at the Event; an estimated number of Event attendees; and any other information the Event Organizer deems pertinent to the City's evaluation of the event, based upon the criteria in this Article. The Event Organizer's estimate of Event attendees must include the Event Organizer's best estimate of the probable attendance and number of participants at the Event. The attendance estimate must be based upon all the relevant factors known at the time, including, without limitation, past attendance at similar events hosting the same or similar performers both in the City and in comparable communities, and the extent of advertising and promotion contemplated. Should projected attendance of the Event greater than or equal to 500 attendees, a Special Event Permit is required. Should projected attendance of the Event be below 500 attendees, a Special Event Permit may still be required if the risk factors described in Sections 28-43 of this Article exist.
- (c) Upon receipt of the event form, the City shall make a determination as to whether the Event is a Special Event. Upon determination that the Event is a Special Event, the Special Event Organizer shall be responsible for complying with Sections 28-34, 28-36, 28-37, 28-38, 28-39, 28-41, 28-43, 28-45 and 28-46 of this Article.
- (d) Exemptions from Event disclosure.

The following Events are not required to submit an Event Request Form to the City:

- (1) Events hosted at a venues designed for large gatherings, such as sporting events at designated fields/arenas/stadiums or musical/theatrical productions at any auditorium, and which do not exceed the parking criteria or fire occupancy of the venue, are exempt from submitting an Event Request Form to the City and are not otherwise governed by this Special Events Ordinance.
- (2) Events held on property owned or leased by any federal or state governmental entity are exempt from the disclosure requirement and are not otherwise governed by this Special Events Ordinance.

**Sec. 28-34. - Special Event Permit Review.**

- (a) All Events meeting the definition of a Special Event or as determined by the City Manager require a Special Event Permit.
- (b) Upon City's request, the Special Event Organizer shall attend a preliminary SERT meeting and shall provide information necessary to determine whether the issuance of a Special Event Permit is appropriate. A determination will be made following the preliminary SERT meeting. If the event is determined to be a Special Event, a follow

up SERT meeting will be required and scheduled by the SERT team. Additional follow-up meetings may be required depending on the size and scope of a Special Event, such as if there are potential risk factors that may be apparent in the application as identified in Section 28-43. If attendance at a SERT meeting is not required, information may still be requested from the Event Organizer in order for SERT and the City to conduct an internal administrative review prior to the issuance of a Special Event Permit.

- (c) Information requested may include but is not limited to: the estimated attendance numbers, time and place of the Event; whether alcohol will be served; a site plan including but not limited to event layout, traffic flow and parking; any anticipated road closures; and whether City and/or other governmental services will be needed at the Event. To ensure that the public health, welfare, and safety are protected, Special Event Organizers shall comply with all relevant City codes, including this Ordinance, all applicable State and Federal laws, the Florida Building Code, and the Fire Prevention Code. The City will complete its review of the Special Event Permit application and shall approve or deny the Special Event Permit accordingly. All Special Event Permits shall include conditions relating to the specifics of the Event designed to ensure that the health, safety, and welfare of the public is protected before, during, and after the Event. SERT shall have the authority to create and impose all permit conditions.
- (d) The Special Event Organizer shall provide SERT with: the names of all persons or groups who will perform at the Special Event; a list of all Vendors and Exhibitors; and all persons or groups who will furnish or provide rides, mechanical entertainment, or amusement devices. Mechanical amusement devices shall comply with the requirements of Chapter 5F-8, Florida Administrative Code.
- (e) The Special Event Organizer will provide sign information as outlined in Chapter 12 of the Unified Land Development Code.
- (f) The Special Event Organizer shall submit a nonrefundable application fee to help defray the City's cost of processing the application and coordinating the relevant City services and personnel.
- (g) Special Events will not be permitted on any property in a residential zoning district, as per Section 3.02.01 of the Unified Land Development Code, or in the residential component of any Master Planned Development (MPD) Zoning District(s).

**Sec. 28-35. - Parades.**

Parades are considered Special Events and must go through the SERT process and receive a Special Event Permit prior to the Parade. All Parades shall have the route verified and approved for feasibility and safety during the review process. Certain routes are prohibited, including, but not limited to, routes along Florida Park Drive and Old Kings Road.

**Sec. 28-36. – Special Event Organizer Indemnification.**

- (a) The Special Event Organizer shall assume full responsibility and liability for and shall agree in writing to indemnify, defend, and hold the City harmless against all liability, claims for damages, and suits for or by reason of any injury to any person, including death, and damage to any property, arising out of or in connection with the Special Event.

**Sec. 28-37. – Special Event Organizer Insurance Requirements.**

- (a) The Special Event Organizer shall be required to provide to the City proof of insurance, covering the period of the Special Event, within ten (10) business days after approval of a Special Event Permit for the following types and amounts of insurance:

- (1) Commercial General Liability Insurance (including property damage, products/completed operations aggregate, premises, operations and blanket contractual liability):

\$1,000,000 each occurrence and \$2,000,000 General Aggregate

The City of Palm Coast shall be named additional insured under the above Commercial General Liability coverage.

- (2) In the event that motor vehicles are used by the Special Event Organizer for any activity associated with the Special Event, Automobile Liability (all automobiles, owned, hired, or non-owned):

\$1,000,000 Combined Single Limit

- (3) In the event that the Special Event Organizer will have employees working on or at the Special Event, Workers Compensation insurance or exemption as required by Florida Workers Compensation Law as defined in Florida Statutes Chapter 440, including evidence of employer's liability insurance for the following minimum limits of coverage:

\$100,000 Each Accident    \$100,000 Disease-Each Employee \$500,000 Disease-Policy Limit

- (4) Such insurance will include coverage for appropriate Federal Acts (Longshore and Harbor Workers Compensation Act, 33 USC §§ 901-952, and the Jones Act, 46 USC § 688 et seq.) where activities include liability exposures for events or occurrences covered by these statutes. The applicant shall grant the City a waiver of subrogation in favor of the City.

- (5) Additional riders in the amount of \$1,000,000.00 may be required to include, but not be limited to, the following: Liquor Liability, Professional Liability (Errors and Omissions), Aircraft Liability (Bodily Injury and Property Damage including passengers), Watercraft Liability, Sexual Molestation Liability, and Assault and Battery.

- (6) In the event that one or more cranes or similar heavy equipment pieces are used for any activity associated with the Special Event, the proof of insurance will clearly demonstrate that the general liability coverage includes coverage for such equipment and has no limitation specific to use of the equipment.
- (7) In the event that fireworks displays or pyrotechnic displays are included in the Special Event, the proof of insurance will clearly demonstrate that general liability coverage as defined in subsection (a) of this section is provided to include coverage for such display(s) with no limitation specific to the display(s). Such evidence must be provided by the organization(s) responsible for such display(s).
- (b) An insurer holding a current certificate of authority pursuant to Florida Statutes Chapter 624 must prepare the insurance. All insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City.
- (c) No material alteration or cancellation, including expiration and nonrenewal, shall be effective until fifteen (15) days following receipt of written notice by the City.
- (d) All required coverages shall be in effect during the period of the Special Event and are to be provided on an occurrence form. In the event that coverage is only available on a claim form, the insured shall agree to maintain extended reporting coverage for a minimum of two (2) years past the expiration of the annual policy term. Failure to have current coverage shall be grounds for revocation of the Special Event Permit.
- (e) State and federal agencies eligible for sovereign immunity as evidenced by the applicable state or federal statutes may submit a statement of self-insurance and liability as allowed by the applicable state or federal statute. Such statement will be acceptable in place of insurance requirements defined herein.
- (f) The Special Event Organizer may be required to provide additional types of coverage and/or greater or lesser amounts of coverage if, according to recognized insurance and risk management industry standards, the modification is reasonable under the circumstances. The City shall state the reasons for any adjustment in writing.

**Sec. 28-38. - Special Event Vendor/Exhibitor Requirements.**

- (a) The Special Event Organizer shall ensure that all Vendors and Exhibitors connected with the Special Event comply with the following:
  - (1) All local Vendors shall possess a current City Local Business Tax Receipt.
  - (2) All other Vendors shall each submit a special event application and purchase a Temporary Vendors Permit from the City.
  - (3) Vendors of food shall have all applicable licenses to be considered for participation in a Special Event. It is the responsibility of the Special Event Organizer to ensure

that participating food Vendors comply with the rules and regulations of the State of Florida Health Department and the regulations of any other governmental entity regulating food distributors.

- (4) All food Vendors who do not have a Florida Department of Business and Professional Regulation (DBPR) annual food vendor's license shall apply for and purchase a DBPR temporary event license in order to participate in the Special Event.
- (5) All Vendors shall, in writing, release, discharge, indemnify and hold the City harmless against all liability, claims for damages, and suits for or by reason of any injury to any person, including death, and damage to any property, connected to the Vendor's participation in the Special Event.
- (6) All Vendors shall complete and sign the applicable Risk Related Vendor Event Participant Application and Agreement Form, and if applicable, the Vendor shall provide proof of insurance that complies with the insurance requirements as set forth in the agreement.
- (7) All Exhibitors shall complete and sign the Participation Application and Agreement Form.
- (8) All special event applications shall be submitted thirty (30) days prior to the Event date.

**Sec. 28-39. - Issuance of Special Event Permit; Grounds For Denial; Appeals.**

- (a) Upon submission and approval of the items and information required by sections 28-34, 28-37, and 28-38, SERT shall issue the Special Events Permit.
- (b) A Special Event Permit may be denied only if:
  - (1) The Special Event Organizer has made any false material representation in the information provided to the City related to the Special Event.
  - (2) The Special Event Organizer fails to provide any of the items or information required by this article.
  - (3) The Special Event will substantially interfere with any other Special Event for which a permit has already been granted, or with the provision of public safety or other City services in support of such other previously scheduled events, or will have a non-mitigable adverse impact upon residential or business access and traffic circulation in the area in which it is to be conducted.
  - (4) The Special Event Organizer failed to comply with requirements from a previous Event or Special Event, such as sign requirements, vendor requirements, or violations of federal, state, and local codes and regulations.



- (5) The conduct of the Special Event will substantially interrupt the safe and orderly movement of aerial or marine navigation, or of public transportation or other vehicular and pedestrian traffic in the area of the Special Event; or will cause irresolvable conflict with construction or development in public rights-of-way or at the public facility where the Special Event is held so as to cause unsafe conditions for the public; or the expected attendance at the Special Event will exceed the lawful capacity of the facility under the City's Fire Code; or the parking available at the facility will be inadequate to accommodate the expected attendance at the Special Event.
- (c) If a permit is denied, SERT shall issue a written notice to the Special Event Organizer giving the reason(s) for denial. Within five (5) business days after issuance of the denial, the Special Event Organizer may appeal the denial to the City Manager for a final decision, by filing a written petition with the City Clerk detailing the grounds for appeal. Appeals shall be considered by the City Manager within five (5) business days of submission of the petition to the City Clerk and the City Manager shall issue a written final determination to the Special Event Organizer.
- (d) In the event that a Special Event Organizer alleges that a permit denial is a First Amendment prior restraint, and any appeal under this section is denied, the Special Event Organizer can appeal, by filing a request within five (5) business days from issuance of the denial directly to the City Council, to be heard at their next available regular meeting. The Special Event Organizer may then appeal to the appropriate court.
- (e) Until all appeals are complete, the permit denial will continue in effect so as to preserve the status quo.

**Sec. 28-40. - Use of Alcoholic Beverages.**

The Special Event Organizer shall comply with all applicable requirements of State beverage laws and City Codes if alcohol is to be served at the Special Event.

**Sec. 28-41. - Revocation Or Suspension Of Permit.**

The City Manager, after consultation with the Sheriff, Fire Chief, Risk Manager, Building Official, Code Enforcement Manager, and Public Works Director, or their designees, may summarily suspend or revoke a Special Event Permit issued under this section for (i) violation of this Ordinance; (ii) violating any other Federal, State, or Local laws or ordinances, or the conditions of the Special Event Permit during or otherwise related to the Special Event; or (iii) making any material false representation to the City concerning the Special Event. In the event of suspension or revocation, the appeal provisions in subsection 28-40(c) shall apply. The five (5) business day appeal period shall commence from the date the suspension or revocation notice is issued by the City.

**Sec. 28-42. - Public Safety At Special Events.**

(a) The following requirements for public safety will be observed at all Special Events:

- (1) Security - If SERT determines that security is required, the Flagler County Sheriff's Office shall be the primary provider of security at Special Events. The number of required safety personnel shall be based on event risk factors set forth in section 28-43. If the Special Event Organizer wishes to use private sector entities for personal safety or property security at Special Events, such entities will be in addition to the services provided by the Sheriff.
- (2) Fire - Fire protection services shall be provided by the City of Palm Coast Fire Department. Fire codes and standards compliance will be verified by the City Fire Marshal to ensure the Special Event complies with Florida Fire Prevention Code, NFPA 1, NFPA 101 Life Safety Code.
- (3) Medical - Special Event Organizers may be required to provide emergency medical services, including transportation, if the Fire Chief finds a need for these services based on event risk factors described in section 28-43. In the event that the City Fire Department determines that it is unable to provide any aspect of emergency medical services, including transportation, such services may be provided by Flagler County.
- (4) The Special Event Organizer must maintain adequate handicap parking in compliance with ADA (Americans with Disabilities Act) thresholds as to the number of spaces required and surface requirement. Existing handicap spaces must be utilized for their intended purpose.
- (5) SERT may allow overflow parking for a Special Event on the public right-of-way, as long as safe pedestrian access to the Special Event is provided. Any overflow parking that is allowed on the right-of-way or on public or private property may require improvements at the Special Event Organizer's expense.

**Sec. 28-43. - Event Risk Factors.**

Event risk factors include the number of projected attendees, service of alcoholic beverages, excessive movement of people or vehicles within or in close proximity to the Event, and/or any Event that includes safety risks such as mosh pits, concerts, or any events using pyrotechnics, explosives, and stunts with special rescue potentials, or other similar activities which may result in physical stress or injury. Special Events with few risk factors, will require fewer public safety personnel.

**Sec. 28-44. - Costs For City Services At Special Events.**

The Special Event Organizer shall be responsible for costs the City incurs for any City personnel necessary for public safety, set up, maintenance, and clean up related to the

event. The fees for City services at Special Events shall be established by resolution of the City Council.

**Sec. 28-45. - Standards For Sanitary Facilities.**

The Special Event Organizer shall provide sanitary facilities in the form of toilets and hand washing stations, based on the projected number of attendees and participants, in a proportion of two restroom facilities to every 250 attendees/participants. Restrooms shall be maintained in a sanitary condition, and shall be serviced at least once daily. Out of the total number of restrooms, at least one must be handicap accessible and a minimum of five percent of the available restrooms must be handicap accessible. Hand washing facilities shall be provided in a proportion of one hand wash facility to every ten portable restrooms and must be provided at any Special Event where food is served or picnic areas are provided.

**Section 28-46. Farmers Markets.**

(a) The following requirements for Farmers Markets will be observed at all Special Events:

- (1) Private farmers markets shall be permitted to operate upon approval of a special event permit in all commercial zoning districts. Additionally, farmers markets are permitted in a Commercial MPD (with the approval of the Owner and property association). Farmers Markets are not permitted within the Palm Coast Parkway and Gateway overlay zones.
- (2) Permits may be applied for quarterly and would cover a once per month (3 consecutive days) farmer's market event if in compliance with the special event code, Section Sections 28-34, 28-36, 28-37, 28-38, 28-39, 28-41, 28-43, 28-45 and 28-46 of this Article, as well as special event policy and procedures imposed by Special Event Review Team (SERT).
- (3) A maximum of two private farmers markets may be permitted to operate at the same time in different locations by different organizers with approval from City of Palm Coast Land Use Administrator.
- (4) No person shall vend fresh fruits, vegetables, or other produce or operate a farmers market without a valid Agricultural Dealer's License issued by the state department of agriculture and consumer services.
- (5) The owner or operator of the farmers market must obtain a notarized letter from the property and the business owner stating that the market can be operated on the property. Proof of liability insurance will be required meeting limits set forth in the special event code.
- (6) Fresh fruits, vegetables or other consumables shall be confined to tables that are at least 3 feet above the ground and must provide sanitary health conditions for customers.

- (7) Conveniently located toilet facilities, including a hand wash lavatory with hot and cold water, and parking shall be available for market vendors and patrons. Location of such facilities shall be determined on a case-by-case basis, including review by the Flagler County Sheriff's Office and City of Palm Coast's planning and zoning, public works and building departments.
- (8) Vendors may arrive one hour prior for set-up and may remain one hour after for break-down. All vendors participating must be permitted through the farmers market operator. The owner or operator of the market is responsible for maintaining current license verification for all vendors quarterly and providing that verification to the City business tax department. No vendors may be added once list is approved.
- (9) All trash, refuse and garbage must be removed from the site at the end of each day. The premises occupied by the farmers market shall be kept clean and free of accumulated trash, refuse or garbage during and after the hours of operation. All discarded fresh fruits, vegetables or other produce will be removed by the vendor.
- (10) Farmers Market Cottage food items, food from mobile food vendors, local fruit, vegetables, flowers, seedlings, and plants may be sold at the Farmers Market provided that the product is produced, processed or manufactured in an establishment licensed by the department of agriculture and/or the department of business and professional regulation. Vendors must provide proof of their current licenses to the Local Business Tax Department to obtain their Business Tax Receipt; vendors with a temporary vendors permit will not be allowed to participate.
- (11) No more than 2 of the same type of vendor will be permitted to participate in a Farmers Market.
- (12) Crafts, souvenirs, and antiques are just a few of the items that cannot be sold at the Farmers Market.
- (13) The sale of the following items is prohibited: live animals, alcoholic beverages and/or any food processed, packed, or prepared at a home or other source not approved by federal, state, or county health authorities or inspected by federal, state or county health authorities.
- (14) Only one banner sign shall be permitted on site (not in right of way) and limited to 16 square feet in size on 48-inch-high stakes with property owner's permission. Banners are allowed on site two hours before the event and removed two hours after the event.

**SECTION 3. AUTHORIZATION TO IMPLEMENT.** The City Manager, or designee, is hereby authorized to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes, and rules.

**SECTION 4. CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made part of the City of Palm Coast Code of Ordinances and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word “Ordinance”, or similar words, may be changed to “Section,” “Article”, or other appropriate word; provided, however, that Sections \_\_\_\_ shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION 5. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Code 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 Ordinance.

**SECTION 6. CONFLICTS.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

**APPROVED** on first reading this 19<sup>th</sup> day of September 2023

**ADOPTED** on second reading after due public notice and hearing City of Palm Coast this day of 3<sup>rd</sup> day of October 2023

*ATTEST:*

**CITY OF PALM COAST**

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>	\$3,000,000.00
<b>Division</b>	ENGINEERING	<b>Account #</b>	43000099-063000-66010
<b>Subject:</b>	RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., APPROVAL OF CONSTRUCTION ENGINEERING INSPECTIONS SERVICES AND A PROJECT CONTINGENCY FOR JAMES F. HOLLAND PARK SPLASH PAD REPAIRS		
<b>Presenter:</b>	Carl Cote, Director of Stormwater & Engineering		
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Presentation</li> <li>2. Resolution</li> <li>3. Draft Contract</li> <li>4. Notice of Intent to Award</li> <li>5. Executive Summary</li> <li>6. Proposal</li> </ol>		
<b>Background:</b>	<p><b>Council Priority:</b> <b>B. Safe and Reliable Services.</b></p> <p>The scope associated with this project includes all work required to bring the splash pad back into a functional, code compliant, safe, and enjoyable amenity to once again serve the Citizens of Palm Coast. The existing concrete deck will be removed, and all underground piping and pump room equipment issues will be corrected. Water feature locations will be revised to function more efficiently and provide for a more enjoyable experience. The new concrete deck will address all code related slope issues and finally an appropriate surfacing material will be installed that is designed specifically for this type of facility.</p> <p>Through a piggyback contract with Collier County, Council approved a contract with Martin Aquatic Design &amp; Engineering to provide design and construction documents for the project in September of 2022. Documents were completed in March of 2023. The project was bid in April of 2023 with Saboungi Construction, Inc., being the responsive Bidder.</p> <p>On March 29, 2023, staff advertised Bid ITB-SWE-23-11 for the James F. Holland Park Splash Pad repair. This Scope of Work will address the deficiencies and return the splash pad to an operatable state. Staff received one (1) bid deemed reasonable and responsible. Staff recommends awarding the contract to Saboungi Construction, Inc., for \$2,594,800.00. The Notice of Intent to Award and Project Bid Overview are attached.</p> <p>Under the existing piggyback contract with Collier County staff is requesting approval of</p>		

expenses in the amount of \$99,780.00 for construction engineering inspection services with Martin Aquatic Design & Engineering.

This item is to approve a contract with Saboungi Construction, Inc., in the amount of \$2,594,800.00, construction engineering services with Martin Aquatic Design & Engineering in the amount of \$99,780.00 and a project contingency in the amount of \$305,420.00 for a total of amount of \$3,000,000.

Funds for this project are budgeted in the Fiscal Year 2024 Capital Improvement Budget.

**SOURCE OF FUNDS WORKSHEET FY24**

<b>Capital Improvement 43000099-063000-66010</b>	<b>\$3,000,000.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$3,000,000.00</u>
<b>Balance</b>	<b>\$0.00</b>

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., APPROVAL OF CONSTRUCTION ENGINEERING INSPECTIONS SERVICES AND A PROJECT CONTINGENCY FOR JAMES F. HOLLAND PARK SPLASH PAD REPAIRS**



# **James F. Holland Park Splash Pad Repairs**

Presenting:

Carl Cote, Director, City of Palm Coast Stormwater & Engineering



# James F. Holland Park Splash Pad Repairs

## Scope of Work

### Remediation

- Remove existing concrete deck
- Correct underground piping and pump room issues
- Rework water feature locations
- Re-install new Code Compliant concrete deck
- Install new Code Compliant surfacing material



# James F. Holland Park Splash Pad Repairs

## Design and Construction

### Design

- Martin Aquatic Design & Engineering
  - Piggyback Contract – Collier County
  - Council Approval September 6, 2022
  - Design completed March, 2023

### Construction

- ITB-SWE-23-11 James F. Holland Park Splash Pad Repairs
  - Posted on March 29, 2023
  - Bid Closed April 27, 2023, with 1 responsive Bidder



# James F. Holland Park Splash Pad Repairs

## Project Funding

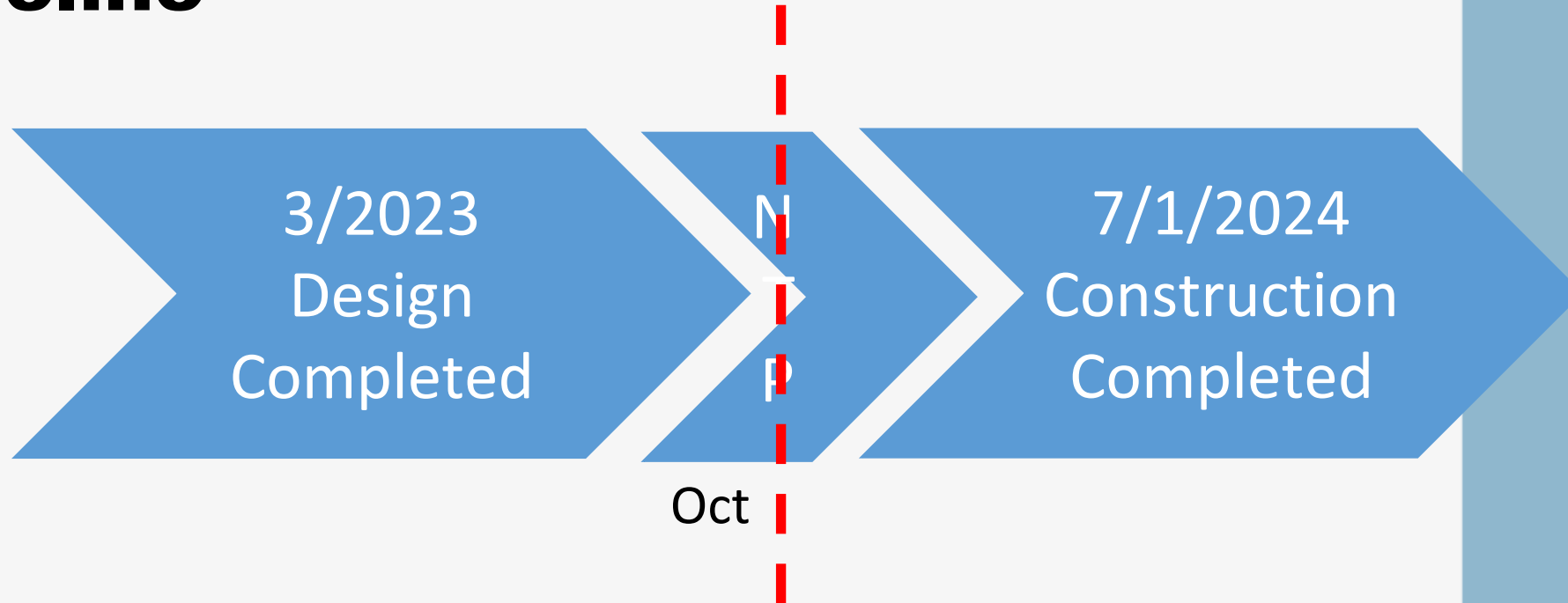
Design and Construction

- Capital Projects - FY 2023 / 2024



# James F. Holland Park Splash Pad Repairs

## Timeline



# James F. Holland Park Splash Pad Repairs

## Council Actions

Approval of Construction Contract

- Saboungi Construction, Inc.
- \$2,594,800.00
  - Construction Cost
- \$99,780.00
  - CEI Services – Martin Aquatic
- \$305,420.00
  - Project Contingency



Questions?



**RESOLUTION 2023 - \_\_\_\_\_**  
**JAMES F. HOLLAND PARK SPLASH PAD REPAIR**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., APPROVAL OF CONSTRUCTION ENGINEERING INSPECTIONS SERVICES AND A PROJECT CONTINGENCY FOR THE JAMES F. HOLLAND PARK SPLASH PAD REPAIRS: PROVIDING AUTHORIZATION TO EXECUTE; PROVIDING FOR FUTURE AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Saboungi Construction, Inc., desires to provide contractor services for the James F. Holland Park Splash Pad repair; and

**WHEREAS**, Martin Aquatic Design & Engineering, desires to provide construction and engineering inspection services for the James F. Holland Park Splash Pad repair; and

**WHEREAS**, the City Council of the City of Palm Coast desires to approve the above-mentioned services for 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. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. APPROVAL OF CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a contract with Saboungi Construction, Inc., for construction services, approval of construction and engineering inspection services with Martin Aquatic Design & Engineering, and a project contingency for the James F. Holland Park Splash Pad Repair as attached hereto and incorporated herein by references as Exhibit “A.”

**SECTION 3. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**SECTION 4. FUTURE AMENDMENTS.** The City Manager, or designee is hereby authorized to approve any future amendments to the Master Services Agreement in accordance

with the limits as set forth in Chapter 2, Division 3 Purchases and Contractual Services relating to the purchase approved by this Resolution.

**SECTION 5. 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 6. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 7. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 8. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A- Draft Contract - Saboungi Construction, Inc.  
Martin Aquatic Proposal





## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between SABOUNGI CONSTRUCTION, INC., duly authorized to conduct business in the State of Florida, whose address is 290A North US Highway 1, Ormond Beach, Florida 32174, hereinafter called the "CONTRACTOR", and THE CITY OF PALM COAST, a political subdivision of the State of Florida, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, hereinafter called the "CITY". CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### WITNESSETH:

**Section 1. Work.** CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction work to repair the Holland Park Splash Pad - to include removal, storage and protection of the existing water features, removal of the concrete deck, modifications to existing system piping, installation of a new concrete sub-deck, re-installation of the surface water features and installation on a new Code compliant interactive water feature surface material.

The Project for which the Work under the Contract Documents is a part is identified as:

### HOLLAND PARK SPLASH PAD REPAIRS, ITB-SWE-23-11

#### **Section 2. Engineer.**

(a) ENGINEER OF RECORD as named in the Contract Documents shall mean Martin Aquatic Design & Engineering.

(b) Construction Engineering "CE" (post design services) is the CITY's Engineer or the CITY's contracted consultant for construction engineering services. According to the Contract Documents, "CE" shall mean City of Palm Coast.

#### **Section 3. Contract Time.**

(a) All provisions regarding Contract Time are essential to the performance of this Contract.

(b) The Work shall be substantially completed as described in subsection 14.13 of the General Conditions, within ninety (90) calendar days beginning on the date of commencement as provided in

subsection 2.2 of the General Conditions. The Work shall be finally completed, ready for Final Payment in accordance with subsection 14.9 of the General Conditions, within thirty (30) calendar days after the actual date of Substantial Completion.

(c) The parties acknowledge that the Contract Time provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms.

(d) Float time is allocated specifically to the CONTRACTOR's responsibility for coordination of utility relocations by subsection 12.1.1.1.3 of the General Conditions is included in the Contract Time provided by this Section. The CITY will not consider any Contract Time extensions related to utility coordination matters including, but not limited to, utility relocations and conflicts, unless the utility relocation delays exceed the float time allowed by subsection 12.1.1.1.3 and also extend the Project Schedule's Critical Path.

(e) In the event that the Work requires phased construction, then multiple points of Substantial Completion may be established in the Supplementary Conditions.

#### **Section 4. Contract Price.**

(a) CITY shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents on the basis of the Total Bid (original Contract Price). The CONTRACTOR's total compensation is **TWO MILLION, FIVE-HUNDRED NINEY-FOUR THOUSAND, EIGHT-HUNDRED DOLLARS (\$2,594,800.00)** subject only to increases or decreases made in strict conformance with the Contract Documents.

(b) CONTRACTOR agrees to accept the Contract Price as full compensation for doing all Work, furnishing all Materials, and performing all Work embraced in the Contract Documents; for all loss or damage arising out of performance of the Work and from the action of the elements or from any unforeseen or unknown difficulties or obstructions which may arise or be encountered in the prosecution of the Work until the Final Acceptance; and for all risks of every description connected with the Work.

(c) The CONTRACTOR acknowledges that CONTRACTOR studied, considered, and included in CONTRACTOR's Total Bid (original Contract Price) all costs of any nature relating to: (1) performance of the Work under Central Florida weather conditions; (2) applicable law, licensing, and permitting requirements; (3) the Project site conditions, including but not limited to, subsurface site conditions; (4) the terms and conditions of the Contract Documents, including, but not limited to, the indemnification, direct purchase of materials and no damage for delay provisions of the Contract Documents.

(d) The CONTRACTOR acknowledges that performance of the Work will involve significant Work adjacent to, above, and in close proximity to Underground Facilities including utilities which will require the support of active utilities, as well as, the scheduling and sequencing of utility installations, and relocations (temporary and permanent) by CONTRACTOR.

(1) In addition to the acknowledgments previously made, the CONTRACTOR acknowledges that the CONTRACTOR's Total Bid (original Contract Price) specifically considered and

relied upon CONTRACTOR's own study of Underground Facilities, utilities in their present, relocated (temporary and permanent) and proposed locations, and conflicts relating to utilities and Underground Facilities.

(2) The CONTRACTOR acknowledges that CONTRACTOR's Total Bid (original Contract Price) considered and included all of CONTRACTOR's costs relating to CONTRACTOR's responsibilities to coordinate and sequence the Work of the CONTRACTOR with the Work of the CITY with its own forces, the work of other utility contractors and the work of others at the Project site.

### **Section 5. Payment Procedures.**

(a) CONTRACTOR shall submit Applications for Payment in accordance with Section 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions. In the event an ENGINEER is not being utilized, Applications for Payment shall be forwarded to the CITY's Finance Accounts Payable Department.

(b) Progress Payments. CITY shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, in accordance with Section 14 of the General Conditions.

(c) Final Payment. Upon Final Completion and acceptance of the Work in accordance with subsection 14.9.1 of the General Conditions, CITY shall pay the remainder of the Contract Price as provided in subsection 14.9.1

### **Section 6. Retainage and Withholding Payment for Breach**

(a) Retainage under the Contract Documents is held as collateral security to secure completion of the Work.

(b) CITY may withhold payment equal to the product of the number of Days after Substantial Completion and the amount of liquidated damages set forth in Section 9 of this Contract for CONTRACTOR's material breach of contract where CONTRACTOR is behind schedule for Substantial Completion, and it is anticipated by CITY that the Work will not be completed within the Contract Time for Substantial Completion. The City may, at the CITY'S discretion, withhold the liquidated damage amount from subsequent Progress Payments. Any withheld payments held under this subsection shall be released to CONTRACTOR in the next Progress Payment following the ENGINEER's approval of a supplemental Progress Schedule demonstrating that the requisite progress will be regained and maintained as required by subsection 6.19.2 of the General Conditions.

**Section 7. Contractor's Representations.** In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

(a) CONTRACTOR has familiarized themselves with the nature and extent of the Contract Documents, Work, locality, weather, Purchasing and Contracts Procedures, and with all local conditions

and federal, state, and local laws, utility locations, ordinances, rules, policies, and regulations that in any manner may affect cost, progress, or performance of the Work.

(b) CONTRACTOR has studied carefully and considered in its Bid all reports of investigations and tests of subsurface and physical conditions of the site affecting cost, progress, scheduling, or performance of the Work.

(c) CONTRACTOR has studied carefully and considered in its Bid the Plans and Specifications, performed necessary observations, examinations, and studied the physical conditions at the site related to Underground Facilities, utility installations, conflicts, re-locations (temporary and permanent) and all other Underground Facilities and utility related conditions of the Work and site that may affect cost, progress, scheduling, or any aspect of performance of the Work and that its Bid reflects all such conditions. CONTRACTOR, by submitting its Bid and executing this Contract acknowledges the constructability of the Work under the Plans and Specifications. CONTRACTOR by its study, excludes and releases the CITY from any implied warranties including but not limited to, those arising under the "Spearin Doctrine", that the Plans and Specifications are adequate to perform the Work.

(d) CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by CONTRACTOR for such purposes.

(e) CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

(f) CONTRACTOR has given ENGINEER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

(g) The CONTRACTOR declares and agrees that the approval or acceptance of any part of the Work or Material by the CITY, ENGINEER or any agent relating to compliance with the Contract Documents shall not operate as a waiver by the CITY of strict compliance with the terms and conditions of the Contract Documents.

(h) The CONTRACTOR declares and agrees that the CITY may require them to repair, replace, restore, or make all things comply with the Contract Documents including all Work or Materials which within a period of two (2) years from Acceptance by CITY are found to be Defective or fail in any way to comply with the Contract Documents. The CONTRACTOR acknowledges that the above two (2) years repair, replace and restoration period is separate from and additional to CONTRACTOR's warranty that the Work has been completed in compliance with the Contract Documents. The two (2) years repair, replace and restoration period is not a limitation upon CONTRACTOR's other warranties, Right-of-Way Permit Bond and/or Material and Workmanship Bond.

(i) The CONTRACTOR's resident Superintendent at the Work site shall be: \_\_\_\_\_ and this Superintendent only shall be utilized by the CONTRACTOR unless otherwise approved by the CITY Project Manager and following the procedure indicated in the General Conditions.

(j) CONTRACTOR has studied carefully and considered all permit requirements related to performance of the Work. CONTRACTOR declares and agrees that all costs related to performing the Work in compliance with the requirements of all permits at the Contract Price are included in the Contract Price. CONTRACTOR agrees that CONTRACTOR shall be solely responsible for payment of all fines and penalties of any nature assessed to the CONTRACTOR or CITY or both by any governmental entity, district, authority, or other jurisdictional entity relating to all permits required for performance of the Work.

(k) CONTRACTOR acknowledges that the performance of the Work under the Contract Documents fulfills a CITY, CONTRACTOR, and public purpose. To that end, CONTRACTOR agrees to respond to citizen complaints related to alleged damage caused by CONTRACTOR's performance of the Work within two (2) days of receipt of the complaint from citizens, ENGINEER, or the CITY. The CONTRACTOR shall utilize the "Report of Unsatisfactory Materials and/or Service" form to respond separately to each complaint. When a complaint is brought to the CONTRACTOR by a citizen, the CONTRACTOR shall identify the citizen and street address in the "Statement of Problem". Responses and action taken by the CONTRACTOR shall specifically identify the problem specific actions taken. Generic statements such as "addressed the problem" are unacceptable. If the CONTRACTOR fails to respond within two (2) days, then the CITY may take corrective action and deduct the actual costs of corrective action from subsequent Progress Payments or the retainage.

(l) CONTRACTOR acknowledges that the CITY owned property obtained for performance of the Work within the project limits includes temporary construction easements. In the event that the CONTRACTOR fails to perform the Work within the Contract Time, then CONTRACTOR shall be solely responsible for payment of all costs for additional or extended temporary construction easements. The CONTRACTOR authorizes the CITY to deduct the actual costs of additional or extended temporary construction easements from subsequent Progress Payments or the retainage.

**Section 8. Contract Documents.** The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR are made a part hereof and consist of the following:

- (a) This Contract.
- (b) Addenda.
- (c) Bid.
- (d) American With Disabilities Act Affidavit.
- (e) Performance Bond.
- (f) Payment Bond.
- (g) Material and Workmanship Bond and/or Right-of-Way Permit Bond

- (h) Specifications.
- (i) Technical Specifications Provided in these Contract Documents
- (j) General Conditions.
- (k) Supplementary Conditions including any utility specific forms provided by the CITY's Utility Division.
- (l) Notice To Proceed.
- (m) Change Orders.
- (n) Certificate of Substantial Completion.
- (o) Certificate of Final Inspection and Completion
- (p) Certificate of Engineer.
- (q) CONTRACTOR's Release.
- (r) Drawings and Plans.
- (s) Supplemental Agreements.
- (t) CONTRACTOR's Waiver of Lien (Partial)
- (u) CONTRACTOR's Waiver of Lien (Final and Complete)
- (v) Subcontractor/Vendor's Waiver of Lien (Final and Complete)
- (w) Consent of Surety to Final Payment
- (x) Instructions to Bidders
- (y) CONTRACTOR's Insurance Requirements, Certificate, and Insurance Policies

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be altered, amended, or repealed by a modification as provided in the General Conditions.

### **Section 9. Liquidated Damages.**

(a) The CITY and CONTRACTOR recognize that time is essential to the performance of this Contract and CONTRACTOR recognizes that the CITY and its traveling public will suffer financial loss if the Work is not substantially completed as described in subsection 14.13 of the General Conditions within the time specified below, plus any extensions thereof allowed in accordance with Section 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or alternative dispute resolution proceeding the damages resulting from inconvenience to the traveling public including traffic loading, intersection operations, costs for time, costs of fuel and costs for some environmental impacts (excluding actual delay damages which may include, but are not limited to, engineering fees and inspection costs) suffered by the CITY if the Work is

not completed on time. Accordingly, CONTRACTOR and CONTRACTOR's Surety agree to pay CITY as liquidated damages, and not as a penalty, **ONE THOUSAND and No/100 DOLLARS (\$1000.00)** per Day for each Day CONTRACTOR exceeds the Contract Time for Substantial Completion until the Work is Substantially Complete. It is agreed that if this Work is not Finally Completed in accordance with the Contract Documents, the CONTRACTOR shall pay the CITY as liquidated damages for delay, and not as a penalty, one-fourth (1/4) of the rate set forth above.

(b) The CONTRACTOR shall pay or reimburse, in addition to the liquidated damages specified herein, the CITY's actual damages which may include but are not limited to expenses for engineering fees and inspection costs arising from CONTRACTOR's failure in meeting either or both the Substantial Completion and Final Completion dates.

(c) The liquidated damages provided in this Section are intended to apply even if CONTRACTOR is terminated, in default, or if the CONTRACTOR has abandoned the Work.

#### **Section 10. Miscellaneous.**

(a) Terms used in this Contract which are defined in Section 1 of the General Conditions shall have the meanings indicated in the General Conditions.

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

(c) CITY and CONTRACTOR each binds themselves, their partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

**Section 11. Contractor's Specific Consideration.** In consideration of the CONTRACTOR's indemnity agreements as set out in the Contract Documents, CITY specifically agrees to pay the CONTRACTOR the sum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) or ONE PERCENT (1%) OF THE CONTRACT SUM WHICHEVER IS GREATER. The CONTRACTOR acknowledges receipt of the specific consideration for CONTRACTOR's indemnification of CITY and that the specific consideration is included in the original Contract Price allocated by CONTRACTOR among all pay items - receipt of which is acknowledged.

**Section 12. Notices.** Whenever either party desires to give notice unto the other including, but not limited to, Contract Claims, it must be given by written notice, hand delivered, signed and dated for receipt or sent by certified United States mail, with return receipt requested, addressed to the party for

whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**TO CONTRACTOR:**

Hassan Saboungi  
Saboungi Construction, Inc.  
290A North US Hwy 1  
Ormond Beach, Florida 32174

**TO CITY:**

City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**Section 13. Conflict of Interest.**

(a) The CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the CITY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government and the CITY's Personnel Policies.

(b) The CONTRACTOR hereby certifies that no officer, agent, or employee of the CITY has any material interest (as defined in Section 112.312 (15), Florida Statutes, as over five percent (5%) either directly or indirectly, in the business of the CONTRACTOR to be conducted here, and that no such person shall have any such interest at any time during the term of this Contract.

(c) Pursuant to Section 216.347, Florida Statutes, the CONTRACTOR hereby agrees that monies received from the CITY pursuant to this Contract will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

**Section 14. Material Breaches of Contract.**

(a) The parties recognize that breaches of the Contract Documents may occur and that remedies for those breaches may be pursued under the Contract Documents. The parties further recognize that the safety of the traveling public is of paramount concern. Therefore, the parties agree that any breach of the Contract Documents related to life safety, including but not limited to, the maintenance of traffic requirements of the Contract Documents, shall be considered a material breach of the Contract Documents.

(b) Upon a material breach of the Contract Documents related to life safety, as determined by ENGINEER, the ENGINEER shall issue a stop work order suspending the Work or any specific portion of the Work until the conditions are corrected. If the life safety conditions giving rise to the stop work order are not corrected within a reasonable time, as determined by ENGINEER, then the material breach shall entitle CITY to terminate this Contract. The recognition of breaches of the provisions of the



Contract Documents related to life safety as material breaches shall not be construed as a limitation on other remedies for breaches or material breaches of the Contract Documents.

### **Section 15. E-Verify Registration and Use**

Effective January 1, 2021, public and private employers, contractors, and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- (a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- (b) All persons (including subvendors/subsconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

**Section 16. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.

**Section 17. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor’s social, political, or ideological interests such as:

- (a) The Contractor’s political opinions, speech, or affiliations;
- (b) The Contractor’s religious beliefs, religious exercise, or religious affiliations;
- (c) The Contractor’s lawful ownership of a firearm;
- (d) The Contractor’s lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
- (e) The Contractor’s engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
- (f) The Contractor’s support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
- (g) The Contractor’s engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
- (h) The Contractor’s failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**IN WITNESS WHEREOF**, the parties hereto have signed this Contract. All portions of the Contract Documents have been signed or identified by the CITY and the CONTRACTOR.

**CITY OF PALM COAST**

**SABOUNGI CONSTRUCTION, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signatory

Name: Denise Bevan

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# City of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-SWE-23-11 - Holland Park Splash Pad Repairs

**Date:** 9/14/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 9/19/2023

Firm	Bid
Saboungi Construction, Inc. Ormond Beach, FL, State	\$2,594,800.00

The intent of the City of Palm Coast is to award ITB-SWE-23-11 to Saboungi Construction, Inc.

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [sknolan@palmcoastgov.com](mailto:sknolan@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*





# ITB-SWE-23-11 - HOLLAND PARK SPLASH PAD REPAIRS

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	ITB-SWE-23-11
<b>Project Name</b>	HOLLAND PARK SPLASH PAD REPAIRS
<b>Project Owner</b>	Shannon Nolan
<b>Project Type</b>	ITB
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	The City of Palm Coast is requesting proposals from Florida State Licensed General Contractors for construction work at our existing Holland Park Splash Pad located at 18 Florida Park Drive North, Palm Coast, Florida. The purpose of this Bid is to address design and construction deficiencies that were observed subsequent to the opening of the Splash Pad on May 3, 2021. The work will include removal, storage and protection of the existing water features, removal of the concrete deck, modifications to existing system piping, installation of a new concrete sub-deck, re-installation of the surface water features and installation on a new Code compliant interactive water feature surface material.
<b>Open Date</b>	Mar 29, 2023 8:00 AM EDT
<b>Intent to Bid Due</b>	May 11, 2023 2:00 PM EDT
<b>Close Date</b>	May 11, 2023 2:00 PM EDT



Awarded Suppliers	Reason	Score
Saboungi Construction, Inc.		100 pts

## Seal status

Requested Information	Unsealed on	Unsealed by
Section 00100, Forms A-I (Except Form C)	May 11, 2023 2:01 PM EDT	Shannon Nolan
Section 00200, Forms A-F, and Bidder Bid Form	May 11, 2023 2:01 PM EDT	Shannon Nolan
Addendums	May 11, 2023 2:01 PM EDT	Shannon Nolan
Construction Forms 5 & 6	May 11, 2023 2:01 PM EDT	Shannon Nolan
Bid Form A Bid Schedule	May 11, 2023 2:01 PM EDT	Shannon Nolan
Section 00100, Form C Financial Statements	May 11, 2023 2:16 PM EDT	Shannon Nolan
Bid Security	May 11, 2023 2:01 PM EDT	Shannon Nolan

## 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?
Ginger Norberg	May 15, 2023 9:38 AM EDT	No
Shannon Nolan	May 11, 2023 2:02 PM EDT	No
Eric Gebo	May 11, 2023 2:20 PM EDT	No
mark tran	May 12, 2023 4:32 PM EDT	No



## Project Criteria

Criteria	Points	Description
Administrative Review	Pass/Fail	All documents completed and submitted as requested.
Technical Review Qualification 00100	Pass/Fail	Review Qualification Forms A-I and References
Technical Review Qualification 00200	Pass/Fail	Review Bid Forms 00200 A-F
Technical Review Construction Forms	Pass/Fail	Review Forms 5 & 6
Admin Review Addenda	Pass/Fail	Ensure Addenda (If Issued) are returned signed/dated
Admin Bid Form Pricing Review	100 pts	Direct Price Entry
Admin Financial Review	Pass/Fail	Review Form C
<b>Total</b>	<b>100 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Administrative Review</b>	<b>Technical Review Qualification 00100</b>	<b>Technical Review Qualification 00200</b>	<b>Technical Review Construction Forms</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>
Saboungi Construction, Inc.	100 pts	Pass	Pass	Pass	Pass

	<b>Admin Review Addenda</b>	<b>Admin Bid Form Pricing Review</b>	<b>Admin Financial Review</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>
Saboungi Construction, Inc.	Pass	100 pts (\$2,594,800.00)	Pass



**Holland IWF – City of Palm Coast**  
 Exhibit C – Revised 2023.09.07 – Professional CA type Services

Project: Holland Park Splash Pad – the City of Palm Coast  
 – Offer for Additional On-Site Observations and Services  
 Date: 07 September 2023  
 To: Carl Cote - Director of Stormwater & Engineering  
 Cc: Eric Gebo, AIA, CFM, Architect III  
 From: Ken Martin, Martin Aquatic Design & Engineering  
 Subject: Martin Aquatic Offer for Review of Construction Administration (CA) Submittals (40 hours),  
 CA On-Site Observations (15 trips), On-Site Substantial Completion Events (2 trips) with  
 Reports, and Project Administrator (80 hours)

**1. Project Description**

- a. Martin Aquatic was requested to provide additional:
  - 1. Review of CA Submittals: 40 Hours
  - 2. On-site observation services: 15 trips with written reports
  - 3. On-Site Substantial Completion events 2 trips with written reports
  - 4. CA Administration for billables: 80 Hours
  
- b. The offer is based on the hourly rates service offer in alignment with the submitted continuing services rates for our firm's personnel.
  
- c. Leading the Martin Aquatic team shall be Ken Martin, Founding Principal of Martin Aquatic Design & Engineering, and our team members. After the on-site observation event, the team shall return to the Martin Aquatic offices to produce the Report and photo documentation. The Report shall be issued to the client within three (3) business days after the observation.

**2. The Scope of Staged Services:**

- a. Per the request from Eric, we anticipate the following observation events:
  - 1. Review of CA Submittals
  - 2. On-site observation services with written reports
  - 3. On-Site Substantial Completion events with written reports
  - 4. CA Administration for billables

On 2023.09.07- Requested CA services in Time and Fees:

Rate Category	Title	USD Hourly Rate	Estimated Hours for Project	Resultant Fees	Sub-Total Fees for Project
A	Founding Principal	\$200.00	300	\$60,000.00	
	Creative Director	\$200.00	0	\$0.00	
	Studio Director	\$200.00	<u>140</u>	<u>\$28,000.00</u>	



Holland IWF – City of Palm Coast

Exhibit C – Revised 2023.09.07 – Professional CA type Services

	<b>Sub-Total for Rate Category "A"</b>	<b>\$200.00</b>	<b>440</b>		<b>\$88,000.00</b>
B	Senior Engineer	\$150.00	0	\$0.00	
	Senior Structural Engineer	\$150.00	0	\$0.00	
	Production Director	\$150.00	0	\$0.00	
	Project Engineer	\$150.00	0	\$0.00	
	Design Technologies Director	\$150.00	0	\$0.00	
	Senior Engineering Coordinator, EIT (FE)	\$150.00	0	\$0.00	
	<b>Sub-Total for Rate Category "B"</b>	<b>\$150.00</b>	<b>0</b>		<b>\$0.00</b>
C	Senior Project Manager	\$130.00	0	\$0.00	
	Engineering Coordinator, EIT (FE)	\$130.00	0	\$0.00	
	Engineering Coordinator	\$130.00	0	\$0.00	
	<b>Sub-Total for Rate Category "C"</b>	<b>\$130.00</b>	<b>0</b>		<b>\$0.00</b>
D	Senior Design Coordinator	\$115.00	0	\$0.00	
	Production Coordinator	\$115.00	0	\$0.00	
	Design Coordinator	\$115.00	0	\$0.00	
	<b>Sub-Total for Rate Category "D"</b>	<b>\$115.00</b>	<b>0</b>		<b>\$0.00</b>
E	Research Assistant / Administrator	\$41.00	80	\$3,280.00	
	<b>Sub-Total for Rate Category "E"</b>	<b>\$41.00</b>	<b>80</b>		<b>\$3,280.00</b>
		<b>Sub-totals of the above</b>	<b>520</b>	<b>\$91,280.00</b>	<b>\$91,280.00</b>

CA Services - recap in trips/hours

**Holland IWF – City of Palm Coast**  
Exhibit C – Revised 2023.09.07 – Professional CA type Services

Assume 15 trips/Interim Observations	<b>360</b>
Assume 2 Substantial Completion Events	<b>40</b>
Review Submittals and Respond to RFI's	<b>40</b>
Administrative & Office Manager	<b><u>80</u></b>
Total Hours from the Above	<b><u>520</u></b>

Reimbursables for each trip:	<b>17 @ \$500.00</b>	<b><u>\$8,500.00</u></b>
<b>Totals of the above</b>		<b>\$99,780.00</b>

**3. Reimbursable Expenses**

The following items are considered expenses reimbursed to Martin Aquatic with no mark-up. Therefore, they are not included in the professional fees above.

- a. All reproduction, postage, and overnight delivery costs
- b. Travel and Transportation Fees
- a. Estimated Travel Expenses: \$500 for each trip
- b. The reimbursables are included in the rate sheet above.

**4. Exclusions**

**The below services are not included in these fees:**

- a. Expert witness fees;
- b. Legal representations or opinions;
- c. Basin or piping leak testing services; however, we can arrange for the services of a highly trained leak expert when authorized by the City;
- d. Destructive testing;
- e. Attendance at meetings with:
  - 1. the Florida Department of Health,
  - 2. with the local building officials,
- f. Meetings with the City Department managers, City Commissioners, and any services not specifically mentioned or included.
- g. Supervision of contractors or other personnel.

**5. Acceptance and authorization to provide professional services:**

- a. Martin Aquatic has submitted the above-outlined proposal offer at your request. This proposal offer is subject to the existing, mutually agreeable, executed continuing services agreement being honored or a mutually agreeable purchase order.
- b. Please do not hesitate to contact us if you require further information or clarification or want to discuss the project scope offer further.

**Martin Aquatic Design & Engineering**

Approved and Accepted by:

\_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Printed Name

By: Ken Martin, Founding Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature and Date

The proposal offer shall remain valid for 90 days from the original date issued.

## Hourly Rates

Title	USD Hourly Rate
Founding Principal	\$265.00
Creative Director	\$230.00
Studio Director	\$220.00
Senior Engineer	\$210.00
Senior Structural Engineer	\$210.00
Production Director	\$200.00
Project Director	\$190.00
Project Engineer	\$190.00
Design Project/Studio Manager	\$175.00
Design Technologies Director	\$170.00
Senior Project Manager	\$170.00
Senior Engineering Coordinator, EIT (FE)	\$170.00
Engineering Coordinator, EIT (FE)	\$160.00
Project Manager	\$160.00
Senior Design Coordinator	\$150.00
Engineering Coordinator	\$150.00
3D Designer	\$140.00
Production Coordinator	\$130.00
Design Coordinator	\$130.00
Research Assistant / Administrator	\$ 90.00

# Martin Aquatic Design & Engineering

## Standard Terms & Conditions of Contract

1. **Contract Billing:** Contract invoice billing shall be monthly and are due 7 days from the invoice date. Payment not received within forty-five (45) days of invoice date will be subject to a service charge in the amount of one and one-half percent (1.5%) per month. If the account is not paid per the terms of this Agreement, Aquatic Design & Engineering, Inc. DBA Martin Aquatic Design & Engineering ("MA" or Martin Aquatic) is entitled to recover all reasonable attorney fees associated with the collection from the Client. In addition, MA reserves the right to suspend all Work, without penalty, when invoices remain unpaid for more than sixty (60) days from the invoice date:
2. **Reimbursable Expenses:** Reimbursable expenses shall include, but not be limited to, expenses for shipping, mailing costs, courier services, supplies, printing, photographic reproductions, and travel-related expenses (such as air travel, lodging, meals, mileage, parking, and rental costs) are expressly in addition to the quoted professional services fees. All reimbursable expenses shall be billed monthly and payable upon the same terms and conditions applicable to invoices for MA's professional fees, as set forth above. There are no markups for reimbursable expenses.
3. **Additional Services:** Any work required in addition to that detailed in this Contract will be billed on an hourly basis according to our then-current rates or a negotiated lump sum fee. Extra Work will include, but not be limited to: Changes in the Scope of Services; Changes made in response to program changes; Changes due to a revision of site/base information provided by others; Changes due to an error of the Contractor during construction; and Design modifications requested by the Client after Client's prior approval. The Client must approve any additional services in writing prior to MA performing additional services.
4. **Delegated Design:** Scope items designed by Martin Aquatic to a performance level, to be later designed and engineered in detail by the Contractor or specialty sub-contractors (installers) as appropriate, are referred to as "Delegated Design." This may include specialty structural engineering of secondary structural systems, electrical design, dewatering, winterization, heater ducting and flues/exhaust, gas supply for heaters, or other specialty items described in the Construction Documents phase scope. The design concept and performance requirements for Delegated Design elements are provided by Martin Aquatic in the Construction Documents.
5. **Dispute Resolution:** Prior to initiating any legal proceedings, the parties hereto agree to submit all claims, disputes, or controversies arising from or in relation to the interpretation, application, or enforcement of this Agreement to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall submit a formal written request to the other Party to this Agreement. This section shall survive the completion or termination of this Agreement. Each Party to the mediation shall pay the mediator's fee in equal shares. In the event of a dispute, except as provided herein, neither Martin Aquatic (MA) nor the Client shall be entitled to the award of attorneys' fees. In no event shall the demand for mediation be made after the date when the applicable statute of limitations would bar the institution of legal or equitable proceedings based on such claim, dispute, or other matter in question. In recognition of MA's Construction Phase role as a representative of Client and enforcer of the requirements of the Contract Documents, Client agrees to include in its Agreement with any Contractor and/or Construction Manager a provision stating that neither such person nor his surety shall bring any civil suit or other legal action against MA or any of MA's officers, employees, or consultants, arising out of or connected with the Project, and stating that similar language shall be included in each subcontract and sub-subcontract for Work in connection with the Project. Additionally, the Contractor and/or Construction Manager shall add MA as an additional insured on their general liability insurance policy. Such provisions shall be expressly stated to be for the benefit of MA and enforceable by MA.
6. **Engineer of Record:** Refer to the Drawings to identify this Project's licensed engineer of record. The provision of engineering services applies only to the states or locales where one or more of its engineers is registered, and MA is a registered engineering firm. MA is not a licensed engineering firm when outside the USA; consequently, the Client shall pay for and provide a local, licensed engineer to sign & seal documents if required and as necessary.
7. **Electronic Media:** If all payments to MA are current and up-to-date, MA may provide the following electronic media:

Description	Type of Electronic Media Provided by MA
Site Plan xRefs	AutoCAD .DWG or. PDF file format
Pool Equipment Room Layout	AutoCAD .DWG or. PDF file format
All other "MA" Drawings & Documents	.PDF file format

8. **General Provisions:** MA assumes no liability arising from this Contract Proposal or the Work involved except for the negligent acts of MA and its employees. MA's policy is to complete its professional services promptly and within established schedules; however, there is no expressed nor implied guarantee when design or engineering documents shall be approved by the applicable governing agencies. In addition, the Client expressly authorizes MA to take photographs of the Project during and subsequent to the performance of the Work.
9. **Governing Body:** This Agreement shall be governed by the interpreted, construed, and enforced laws of the State of Florida.
10. **Indemnifications:** MA agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, and employees (collectively, Client) against all damages, liabilities, or costs (including reasonable attorneys' fees and defense costs), to the extent caused by the MA's negligent performance of professional services under this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MA, its officers, directors, employees, and subconsultants (collectively, MA) against all damages, liabilities, third-party actions or claims, or costs (including reasonable attorneys' fees and defense costs), to the extent caused by the Client's negligent acts in connection with the Project, and the acts of the Client's contractors, subcontractors or consultants, or anyone for whom the Client is legally liable. Neither the Client nor MA shall be obligated to indemnify the other Party in any manner whatsoever for the other Party's own negligence or the negligence of others.
11. **The Opinion of Probable Construction Costs:** In providing opinions of probable construction costs, the Client understands that neither MA nor the Client has control over the costs or the price of labor, equipment, materials, over the Contractor's method of determining bid prices, over competitive bidding, market conditions, or negotiating conditions. Accordingly, MA cannot warrant or represent that bids or negotiated prices will not vary from any estimate or opinion of probable construction costs or evaluation prepared or agreed to by MA.
12. **Ownership and Use of Documents:** All documents provided by MA under this Agreement ("Documents") are and shall remain the property of MA; however, the Client shall have an exclusive license to use, copy, and reproduce the Documents in connection with the construction, repair, maintenance, and occupancy of the Project. Such a license shall not be transferable except with MA's written consent and shall become irrevocable upon payment in full of all amounts due under this Agreement. MA shall not be responsible for changes made in the Documents by anyone other than MA or for the Client's use of the Documents without MA's participation. The Client agrees that Blue Mar Basins™ by Martin Aquatic are pristine, man-made swimming amenities backed by patent-pending technology and the Intellectual Property of Martin Aquatic. All related Blue Mar Basins™ Intellectual Property and patent-pending technology are strictly the property of Martin Aquatic and shall not be used without the express written consent of Martin Aquatic.
13. **Representations.** Each Party represents and warrants that it is authorized to enter into this Agreement and that entering into this Agreement does not violate any obligations that the Party owes to any third Party. Owner represents and warrants that it is able to enter into this Agreement with MA without breaching any legal restrictions on the Owner's activities, such as non-competition, non-solicitation, or confidentiality obligations and trade secrets, that the Owner owes to third Parties. MA specifically relies on Owner's representation that entering this Agreement does not violate any such obligations.

## Martin Aquatic Design & Engineering Standard Terms & Conditions of Contract

Owner further represents that it shall not remove or take any documents or proprietary data, information, or materials of any kind, electronic or otherwise, from any third party without that third Party's consent and permission to use such information in connection with this Agreement. Finally, the Owner represents that it shall not use or disclose any confidential information belonging to any third Party during the course or scope of this Agreement.

- a. Owner shall defend, indemnify and hold harmless Martin Aquatic Design & Engineering (MA), its affiliates, and their respective stockholders, directors, officers, employees, and sub-consultants from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements (collectively, "Losses"), arising from or relating to:
  - i. any inaccuracy in or breach of any of the representations or warranties of the Owner contained in this Agreement or any document to be delivered hereunder; or
  - ii. any allegation that Owner has misappropriated or infringed any third party's intellectual property rights.
14. **Risk Allocations and Limitation of Liability:** MA's liability for injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement, from any cause or causes, shall not exceed the total amount of \$100,000 or the amount of MA's fee, whichever is greater. Such causes include but are not limited to, MA's negligence, errors, omissions, and strict liability.
15. **Standard of Care:** Services provided by MA under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. In preparing its Drawings and Documents, the Client expressly authorizes MA to rely upon the accuracy of the documents supplied to MA by the Client, Owner, or the Owner's consultants in preparing the MA documents. Upon notice to MA, and by a mutual agreement between the parties, MA will correct, without additional compensation, those services not meeting such a standard.
16. **Corporate Liability:** The Client and MA specifically agree that the provision of Engineering and related Professional Services are subject to the following:

**PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL DESIGN PROFESSIONAL, EMPLOYEE. OR AGENT OF AQUATIC DESIGN & ENGINEERING, INC., DBA MARTIN AQUATIC DESIGN & ENGINEERING, MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OR RELATED TO THIS AGREEMENT AND THE SERVICES PROVIDED.**

# CERTIFICATE OF INSURANCE



AQUADES-01

BBROWN

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
2/7/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> JCJ Insurance Agency, LLC 2208 Hillcrest Street Orlando, FL 32803	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (321) 445-1117      FAX (A/C, No): (321) 445-1076 E-MAIL ADDRESS: certs@jcyj-insurance.com	
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b>	
<b>INSURED</b> Aquatic Design & Engineering, Inc. dba Martin Aquatic Design & Engineering 189 S Orange Ave, Ste 1220 Orlando, FL 32801	<b>INSURER A : Phoenix Insurance Co.</b> <b>25623</b>	
	<b>INSURER B : Travelers Indemnity Co.</b> <b>25658</b>	
	<b>INSURER C : Travelers Prop &amp; Cas of Amer</b> <b>25674</b>	
	<b>INSURER D : Travelers Casualty &amp; Surety Co</b> <b>19038</b>	
	<b>INSURER E : Hudson Insurance Company</b> <b>25054</b>	
<b>INSURER F :</b>		

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			<b>6809P799874</b>	<b>2/1/2022</b>	<b>2/1/2023</b>	EACH OCCURRENCE \$ <b>1,000,000</b>
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b>
							MED EXP (Any one person) \$ <b>5,000</b>
							PERSONAL & ADV INJURY \$ <b>1,000,000</b>
							GENERAL AGGREGATE \$ <b>2,000,000</b>
							PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b>
							\$
<b>B</b>	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			<b>BA9P800607</b>	<b>2/1/2022</b>	<b>2/1/2023</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b>
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
<b>C</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ <b>10,000</b>			<b>CUP9P80155A</b>	<b>2/1/2022</b>	<b>2/1/2023</b>	EACH OCCURRENCE \$ <b>5,000,000</b>
							AGGREGATE \$ <b>5,000,000</b>
							\$
<b>D</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below			<b>UB9P801106</b>	<b>2/1/2022</b>	<b>2/1/2023</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT \$ <b>1,000,000</b>
							E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b>
							E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>E</b>	<b>Professional Liab</b>			<b>PRB 06 19 113330</b>	<b>2/1/2022</b>	<b>2/1/2023</b>	<b>Per Claim</b> \$ <b>1,000,000</b>
							<b>Aggregate</b> \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  For Proposal Purposes	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

ACORD 25 (2016/03)

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# W-9 TAXPAYER ID

Form **W-9**  
(Rev. October 2018)  
Department of the Treasury  
Internal Revenue Service

## Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**Aquatic Design & Engineering, Inc.**

2 Business name/disregarded entity name, if different from above  
**dba Martin Aquatic Design & Engineering**

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ \_\_\_\_\_

Other (see instructions) ▶ \_\_\_\_\_

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.  
**189 S. Orange Avenue, Suite 1220**

6 City, state, and ZIP code  
**Orlando, Florida 32801**

7 List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Social security number**

				-						
--	--	--	--	---	--	--	--	--	--	--

or

**Employer identification number**

5	9	-	3	3	6	1	2	1	1
---	---	---	---	---	---	---	---	---	---

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here** Signature of U.S. person ▶ 

Date ▶ **10/1/19**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



BPO Mgr. Approval

DS  
JR



### CONTRACT EXECUTIVE OVERVIEW

Vendor Name: Aquatic Design & Engineering dba Martin Aquatic Design & Engineering

Bid/Contract Ref # Solicitation and Contract # 18-7432-AQ

Agency Name: Collier County, FL

Contract Type: Piggyback

Contract Value Over \$50K

Resolution # 2022- 75

City Council Approval Date: June 7, 2022

Contract Term End Date 6/4/2025

Renewable Y/N Yes

If yes # and length of renewals: One (1) each One (1) year renewal option.

City's Project Manager(s) Carl Cote

**Brief Description/Purpose:**

To utilize the terms, conditions, scope and pricing of the Collier County, FL Agreement for Aquatics Engineering and Design Services as needed.

**Approvals:**

Responsible Dept. Director Carl Cote  
DocuSigned by: D9149C6987AB49F...

Date: Jun 8, 2022 | 5:27 AM PDT

City Finance Helena Alves  
DocuSigned by: 4F2A3892B67B492...

Date: Jun 8, 2022 | 8:44 AM EDT

City Attorney Musa Borkert  
DocuSigned by: E1D83E71806D418...

Date: Jun 8, 2022 | 11:23 AM EDT

City Manager Denise Bevan  
DocuSigned by: B8F859DE5A4147C...

Date: Jun 10, 2022 | 6:37 AM EDT

Vendor Name and Email Joshua M. Martin josh@martinaquatic.com



# City of PALM COAST

**Finance Department**  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

Martin Aquatic Design & Engineering  
Attn: Joshua M. Martin  
189 South Orange Avenue, Suite 1220  
Orlando, FL 32801

RE: Engagement Letter Authorizing Piggyback

Contract for Aquatic Engineering and Design Services

Contract Name

Solicitation and Contract # 18-7432-AQ

Contract Reference

Dear Joshua,

The City of Palm Coast, Florida requests permission to utilize your company's above referenced contract in accordance with its terms and conditions and pricing. If agreed, please indicate approval by electronically signing below as well as the Addendum covering the E-Verify and Public Records requirements.

All invoices should be sent via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com). If email is not possible, please mail invoices to: City of Palm Coast, Attn: Accounts Payable, 160 Lake Avenue, Palm Coast, Florida 32164. All legal notices should be sent to the attention of the City Manager at the same address.

Please feel free to contact me at the email address below if you have any questions.

Regards,

*Jesse K. Scott*

Jesse K. Scott  
Procurement Coordinator  
jkscott@palmcoastgov.com

**This Engagement Letter is hereby acknowledged and agreed to:**

**CITY OF PALM COAST**

DocuSigned By:

*Denise Bevan*

B8F859DE5A4147C...

Print: Denise Bevan

Title: City Manager

Date: Jun 10, 2022 | 6:37 AM EDT

**MARTIN AQUATIC DESIGN & ENGINE**

*KENNETH R MARTIN*

(Authorized Signatory)

Print Name: KENNETH R MARTIN

Title: Treasurer

Date: May 19, 2022 | 3:15 PM EDT



**ENGAGEMENT LETTER ADDENDUM****1. E-Verify Registration and Use.**

- A. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, SUPPLIER shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all SUPPLIER employees hired on and after January 1, 2021.
- B. Subcontractors
- (i) SUPPLIER shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.
- (ii) SUPPLIER shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.
- (iii) SUPPLIER shall maintain a copy of all subcontractor affidavits for the duration of this Agreement and provide it to CTIY upon request.
- C. SUPPLIER must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the SUPPLIER stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system.
- D. Failure to comply with this provision is a material breach of the Agreement, and shall result in the immediate termination of the Agreement without penalty to CITY. SUPPLIER shall be liable for all costs incurred by CITY to secure a replacement agreement, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

**2. Public Records.**

- A. The Parties specifically acknowledge that the Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:
- i. Keep and maintain all public records required by CITY to perform the Services herein; and
- ii. Upon request from CITY's custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
- iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.
- B. All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.

**C. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY’S CUSTODIAN OF PUBLIC RECORDS, ATTN: VIRGINIA SMITH, CITY CLERK, AT 386-986-3713, vsmith@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**CITY OF PALM COAST**

**SUPPLIER**

DocuSigned by:  
By: Denise Bevan  
B8F859DE5A4147C...  
Print: Denise Bevan  
  
Title: City Manager  
  
Date: Jun 10, 2022 | 6:37 AM EDT

DocuSigned by:  
By: KENNETH R MARTIN  
(Authorized Corporate Officer)  
7245BC165B57438...  
Print Name: KENNETH R MARTIN  
  
Title: Treasurer  
  
Date: May 19, 2022 | 3:15 PM EDT

**PROFESSIONAL SERVICES AGREEMENT  
(FIXED TERM CONTINUING CONTRACT)**

**CCNA**     **NON-CCNA**

Contract # 18-7432-AQ

for  
" Professional Services Library  
Aquatics Engineering and Design Services Category "

THIS AGREEMENT is made and entered into this 5th day of June, 2020 by and between the Board of County Commissioners for Collier County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "COUNTY") and Aquatic Design & Engineering, Inc. D/B/A Martin Aquatic Design & Engineering, authorized to do business in the State of Florida, whose business address is 189 South Orange Avenue, Suite 1220, Orlando, FL 32801 (hereinafter referred to as the "CONSULTANT" and/or "CONTRACTOR").

**WITNESSETH:**

**WHEREAS**, the COUNTY desires to obtain the CONSULTANT's services expeditiously when a need arises in connection with a Collier County project; and

**WHEREAS**, Section 287.055, Florida Statutes, Consultant's Competitive Negotiation Act, "CCNA", makes provisions for a fixed term contract with a firm to provide professional services to a political subdivision, such as the County; and

**WHEREAS**, the COUNTY has selected CONSULTANT in accordance with the provisions of Section 287.055, Florida Statutes, to provide professional services on a fixed term basis as directed by the COUNTY for such projects and tasks as may be required from time to time by the COUNTY.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

**ARTICLE ONE  
CONSULTANT'S RESPONSIBILITY**

1.1. From time to time upon the written request or direction of the COUNTY as hereinafter provided, CONSULTANT shall provide to the COUNTY professional services (hereinafter the "Services") as herein set forth. The term "Services" includes all Additional Services authorized by written Amendment or Change Order as hereafter provided.

1.2. CONSULTANT acknowledges and agrees that services under this Agreement are to be requested by the COUNTY on an as-needed basis only, and COUNTY makes no representation or guarantee to CONSULANT that the COUNTY will utilize CCONSUTLANT'S services exclusively or at all.

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1.3 All Services to be performed by the CONSULTANT pursuant to this Agreement shall be in conformance with the scope of services, which shall be described in a Work Order issued pursuant to the procedures described herein. The form of the Work Order is set forth in attached Schedule A. Reference to the term "Work Order" herein, with respect to authorization of Services, includes all written Amendments or Change Orders to any particular Work Order. The CONSULTANT acknowledges and agrees that each individual Work Order shall not exceed \$200,000 or the maximum sum allowable by law under Florida's Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as amended, whichever is greater, and as agreed upon by the parties.  Work order assignments for CCNA contracts shall be made in accordance with the current Procurement Ordinance, as amended.

1.4.  (Multi-Award) SELECTION OF CONSULTANT FOR WORK ORDERS. All CONSULTANTS subject to this Agreement, including CONSULTANT, shall be placed on a rotation list for professional service, as listed below.

1.4.1. Professional Services Library Rotation

- a. Work assignments within each service category are awarded on a rotational basis by the Procurement Division.
- b. For each service category, the Procurement Service Division will place qualifying firms in the Professional Services Library in the order they are ranked, with the highest scoring firm placed in the first position in the rotation.
- c. As each work assignment is identified the next firm in the rotation will be offered the opportunity to negotiate that work assignment with the COUNTY's Contract Administrative Agent/Project Manager.
- d. Should a firm decline a work assignment, or be unable to reach a satisfactory fee negotiation with the COUNTY within a reasonable time frame, the COUNTY will contact the next firm on the list until the work assignment is successfully negotiated.
- e. Firms will have the option of rejecting one work assignment within each service category within a twelve (12) month period without penalty. A second work assignment rejection within any twelve (12) month period will cause the firm to be skipped in the rotation. A firm who rejects three (3) work assignments (or is unable to satisfactorily negotiate 3 work assignments) in any twelve (12) month period may be removed from the service category.
- f. Firms wishing to reject a work assignment for any reason must complete a Work Assignment Rejection Notification Form. A copy of this completed form must be provided to the Procurement Division by the County's Contract Administrative Agent/Project Manager.
- g. Once a full rotation through all firms in a service category is complete, a method that attempts to impart an equitable distribution of work among selected firms will be based on prior dollars awarded; with the firm having received the least amount of dollars being considered for the next work assignment.



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1.4.1.1 Professional Services Library – Direct Selection. For work assignments requiring unique experience or knowledge, including past experience on another phase of the project, the County's Contract Administrative Agent/Project Manager may formally request permission to forego the rotation and select a specific firm. This request will require the completion of a Work Assignment Direct Select Form, which requires the approval of both a Division Director and the Procurement Services Director. Firms that are directly selected for a work assignment as a result of this process shall be passed on their next scheduled turn in the rotation.

1.5. All Services must be authorized in writing by the COUNTY in the form of a Work Order. The CONSULTANT shall not provide any Services to the COUNTY unless and to the extent they are required in a written Work Order. Any Services provided by CONSULTANT without a written Work Order shall be at CONSULTANT's own risk and the COUNTY shall have no liability for such Services.

1.6. As the COUNTY identifies certain Services it wishes CONSULTANT to provide pursuant to the terms of this Agreement, the COUNTY shall request a proposal from CONSULTANT for such Services, said proposal to be in compliance with the terms of this Agreement. If the parties reach an agreement with respect to such Services, including, but not limited to the scope, compensation and schedule for performance of those Services, a Work Order shall be prepared which incorporates the terms of the understanding reached by the parties with respect to such Services; and if both parties are in agreement therewith, they shall jointly execute the Work Order. Upon execution of a Work Order as aforesaid, CONSULTANT agrees to promptly provide the Services required thereby, in accordance with the terms of this Agreement and the subject Work Order.

1.7. It is mutually understood and agreed that the nature, amount and frequency of the Services shall be determined solely by the COUNTY and that the COUNTY does not represent or guarantee to CONSULTANT that any specific amount of Services will be requested or required of CONSULTANT pursuant to this Agreement.

1.8. The CONSULTANT shall have no authority to act as the agent of the COUNTY under this Agreement or any Work Order, or to obligate the COUNTY in any manner or way.

1.9. All duly executed Work Orders (including all written Amendments or Change Orders thereto) are hereby incorporated into and made a part of this Agreement by reference.

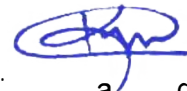
1.10. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.11. The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services to the COUNTY.



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1.12. The CONSULTANT designates ~~Johnathan Toavs~~ Michael Weinbaum, P.E. a qualified licensed professional to serve as the CONSULTANT's project coordinator (hereinafter referred to as the "Project Coordinator"). The Project Coordinator is authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. In each Work Order CONSULTANT will designate a qualified licensed professional to serve as CONSULTANT's project coordinator for the Services to be provided under that Work Order (hereinafter referred to as the "Project Coordinator"). The Project Coordinator is authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the Services to be provided and performed under the Work Order. Further, the Project Coordinator has full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to the Work Order. The CONSULTANT agrees that the Principal in Charge and the Project Coordinators shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the CONSULTANT under the Work Order. CONSULTANT further agrees that the Principal in Charge and Project Coordinators shall not be removed by CONSULTANT without the COUNTY's prior written approval, and if so removed must be immediately replaced with a person acceptable to the COUNTY.

1.13. The CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the COUNTY to promptly remove and replace the Project Coordinator, or any other personnel employed or retained by the CONSULTANT, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, or any applicable Work Order, said request may be made with or without cause. Any personnel so removed must be immediately replaced with a person acceptable to the COUNTY.

1.14. The CONSULTANT represents to the COUNTY that it has expertise in the type of professional services that will be performed pursuant to this Agreement and has extensive experience with projects similar to the Project required hereunder. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the COUNTY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all applicable laws, statutes, including but not limited to ordinances, codes, rules, regulations and requirements of any governmental agencies, and the Florida Building Code where applicable, which regulate or have jurisdiction over the Services to be provided and performed by CONSULTANT hereunder, the Local Government Prompt Payment Act (218.735 and 218.76 F.S.), as amended, and the Florida Public Records Law Chapter 119, including specifically those contractual requirements at F.S. § 119.0701(2)(a)-(b) as stated as follows:

**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:**

**Communication and Customer Relations Division  
3299 Tamiami Trail East, Suite 102  
Naples, FL 34112-5746  
Telephone: (239) 252-8383**



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The Contractor must specifically comply with the Florida Public Records Law to:

1. Keep and maintain public records required by the public agency to perform the service.
2. 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 this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. 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.

If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the COUNTY in writing. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this Agreement and the COUNTY shall have the discretion to unilaterally terminate this Agreement immediately.

1.15. In the event of any conflicts in these requirements, the CONSULTANT shall notify the COUNTY of such conflict and utilize its best professional judgment to advise the COUNTY regarding resolution of each such conflict. The COUNTY's approval of the design documents in no way relieves CONSULTANT of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.

1.16. The COUNTY reserves the right to deduct portions of the (monthly) invoiced (task) amount for the following: Tasks not completed within the expressed time frame, including required deliverables, incomplete and/or deficient documents, failure to comply with local, state and/or federal requirements and/or codes and ordinances applicable to CONSULTANT's performance of the work as related to the project. This list is not deemed to be all-inclusive, and the COUNTY reserves the right to make sole determination regarding deductions. After notification of deficiency, if the CONSULTANT fails to correct the deficiency within the specified timeframe, these funds would be forfeited by the CONSULTANT. The COUNTY may also deduct or charge the CONSULTANT for services and/or items necessary to correct the deficiencies directly related to the CONSULTANT's non-performance whether or not the COUNTY obtained substitute performance.



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1.17. The CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without the COUNTY's prior written consent, or unless incident to the proper performance of the CONSULTANT's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. CONSULTANT shall provide the COUNTY prompt written notice of any such subpoenas.

1.18. As directed by the COUNTY, all plans and drawings referencing a specific geographic area must be submitted in an AutoCAD DWG or MicroStation DGN format on a CD or DVD, drawn in the Florida State Plane East (US Feet) Coordinate System (NAD 83/90). The drawings should either reference specific established Survey Monumentation, such as Certified Section Corners (Half or Quarter Sections are also acceptable), or when implemented, derived from the RTK (Real-Time Kinematic) GPS Network as provided by the COUNTY. Information layers shall have common naming conventions (i.e. right-of-way - ROW, centerlines - CL, edge-of-pavement - EOP, etc.), and adhere to industry standard CAD specifications.

## **ARTICLE TWO ADDITIONAL SERVICES OF CONSULTANT**

2.1. If authorized in writing by the COUNTY through an Amendment or Change Order to a Work Order, CONSULTANT shall furnish or obtain from others Additional Services beyond those Services originally authorized in the Work Order. The agreed upon scope, compensation and schedule for Additional Services shall be set forth in the Amendment or Change Order authorizing those Additional Services. With respect to the individuals with authority to authorize Additional Services under this Agreement, such authority will be as established in the COUNTY's Procurement Ordinance and Procedures in effect at the time such services are authorized. Except in an emergency endangering life or property, any Additional Services must be approved in writing via an Amendment or Change Order to the subject Work Order prior to starting such services. The COUNTY will not be responsible for the costs of Additional Services commenced without such express prior written approval. Failure to obtain such prior written approval for Additional Services will be deemed: (i) a waiver of any claim by CONSULTANT for such Additional Services and (ii) an admission by CONSULTANT that such Work is not additional but rather a part of the Services originally required of CONSULTANT under the subject Work Order.

2.2. If the COUNTY determines that a change in a Work Order is required because of the action taken by CONSULTANT in response to an emergency, an Amendment or Change Order shall be issued to document the consequences of the changes or variations, provided that CONSULTANT has delivered written notice to the COUNTY of the emergency within forty-eight (48) hours from when CONSULTANT knew or should have known of its occurrence. Failure to provide the forty-eight (48) hour written notice noted above, waives CONSULTANT's right it otherwise may have had to seek an adjustment to its compensation or time of performance under the subject Work Order.



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**ARTICLE THREE  
THE COUNTY'S RESPONSIBILITIES**

3.1. The COUNTY shall designate in writing a project manager to act as the COUNTY's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Manager"). The Project Manager shall have authority to transmit instructions, receive information, interpret and define the COUNTY's policies and decisions with respect to CONSULTANT's services for the Project. However, the Project Manager is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- a. The scope of services to be provided and performed by the CONSULTANT as set forth in the Work Order;
- b. The time the CONSULTANT is obligated to commence and complete all such services as set forth in the Work Order; or
- c. The amount of compensation the COUNTY is obligated or committed to pay the CONSULTANT as set forth in the Work Order.

3.2. The Project Manager shall:

- a. Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;
- b. Provide all criteria and information requested by CONSULTANT as to the COUNTY's requirements for the Services specified in the Work Order, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
- c. Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT's disposal all available information in the COUNTY's possession pertinent to the Services specified in the Work Order, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to the subject Work Order;
- d. Arrange for access to and make all provisions for CONSULTANT to enter the site (if any) set forth in the Work Order to perform the Services to be provided by CONSULTANT under the subject Work Order; and
- e. Provide notice to CONSULTANT of any deficiencies or defects discovered by the COUNTY with respect to the Services to be rendered by CONSULTANT hereunder.

**ARTICLE FOUR  
TIME**

4.1. Each Work Order will have a time schedule ("Schedule") for the performance of the Services required under the subject Work Order. Said Schedule shall be in a form and content satisfactory to the COUNTY. Services to be rendered by CONSULTANT shall be commenced,



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performed and completed in accordance with the Work Order and the Schedule. Time is of the essence with respect to the performance of the Services under each Work Order.

4.2. Should CONSULTANT be obstructed or delayed in the prosecution or completion of the Services as a result of unforeseeable causes beyond the control of CONSULTANT, and not due to its own fault or neglect, including but not restricted to acts of nature or of public enemy, acts of government or of the COUNTY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify the COUNTY in writing within five (5) working days after commencement of such delay, stating the specific cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension for that specific delay.

4.3. Unless otherwise expressly provided in the Work Order, no interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONSULTANT's Services from any cause whatsoever, including those for which COUNTY may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from the COUNTY. CONSULTANT's sole remedy against the COUNTY will be the right to seek an extension of time to the Schedule; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

4.4. Should the CONSULTANT fail to commence, provide, perform or complete any of the Services to be provided hereunder in a timely manner, in addition to any other rights or remedies available to the COUNTY hereunder, the COUNTY at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT under this Agreement (including any and all Work Orders) until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the COUNTY's satisfaction that the CONSULTANT's performance is or will shortly be back on schedule.

4.5. In no event shall any approval by the COUNTY authorizing CONSULTANT to continue performing Work under any particular Work Order or any payment issued by the COUNTY to CONSULTANT be deemed a waiver of any right or claim the COUNTY may have against CONSULTANT for delay or any other damages hereunder.

4.6. The period of service shall be from the date of execution of this Agreement through five ( 5 ) year(s) from that date, or until such time as all outstanding Work Orders issued prior to the expiration of the Agreement period have been completed. The COUNTY may, at its discretion and with the consent of the CONSULTANT, renew the Agreement under all of the terms and conditions contained in this Agreement for one ( 1 ) additional one ( 1 ) year(s) periods. The COUNTY shall give the CONSULTANT written notice of the COUNTY's intention to renew the Agreement term prior to the end of the Agreement term then in effect.

4.7. The County Manager, or his designee, may, at his discretion, extend the Agreement under all of the terms and conditions contained in this Agreement for up to one hundred and eighty (180) days. The County Manager, or his designee, shall give the CONSULTANT written notice of the COUNTY's intention to extend the Agreement term prior to the end of the Agreement term then in effect.



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## ARTICLE FIVE COMPENSATION

5.1. Compensation and the manner of payment of such compensation by the COUNTY for Services rendered hereunder by CONSULTANT shall be as prescribed in each Work Order. The Project Manager, or designee, reserves the right to request proposals from this agreement utilizing any of the following Price Methodologies:

**Lump Sum (Fixed Price):** A firm fixed total price offering for a project; the risks are transferred from the COUNTY to the CONSULTANT; and, as a business practice there are no hourly or material invoices presented, rather, the CONSULTANT must perform to the satisfaction of the COUNTY's Project Manager before payment for the fixed price contract is authorized.

**Time and Materials:** The COUNTY agrees to pay the contractor for the amount of labor time spent by the CONSULTANT's employees and subcontractors to perform the work (number of hours times hourly rate), and for materials and equipment used in the project (cost of materials plus the contractor's mark-up). This methodology is generally used in projects in which it is not possible to accurately estimate the size of the project, or when it is expected that the project requirements would most likely change. As a general business practice, these contracts include back-up documentation of costs; invoices would include number of hours worked and billing rate by position (and not company (or subcontractor) timekeeping or payroll records), material or equipment invoices, and other reimbursable documentation for the project.

5.2. The hourly rates as set forth and identified in Schedule B, Attachment 1, Rate Schedule, which is attached hereto, shall apply only to projects procured under the Time and Materials pricing methodology specified in paragraph 5.1 above.  **Grant Funded:** The hourly rates as set forth and identified in Schedule B, Attachment 1, Rate Schedule, which is attached hereto, are for purposes of providing estimate(s), as required by the grantor agency.

## ARTICLE SIX OWNERSHIP OF DOCUMENTS

6.1. Upon the completion or termination of each Work Order, as directed by the COUNTY, CONSULTANT shall deliver to the COUNTY copies or originals of all records, documents, drawings, notes, tracings, plans, MicroStation or AutoCAD files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by or for CONSULTANT under the applicable Work Order ("Project Documents"). The COUNTY shall specify whether the originals or copies of such Project Documents are to be delivered by CONSULTANT. The CONSULTANT shall be solely responsible for all costs associated with delivering to the COUNTY the Project Documents. The CONSULTANT, at its own expense, may retain copies of the Project Documents for its files and internal use.

6.2. Notwithstanding anything in this Agreement to the contrary and without requiring the COUNTY to pay any additional compensation, CONSULTANT hereby grants to the COUNTY a nonexclusive, irrevocable license in all of the Project Documents for the COUNTY's use with respect to the applicable authorized project or task. The CONSULTANT warrants to the COUNTY that it has full right and authority to grant this license to the COUNTY. Further, CONSULTANT



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consents to the COUNTY's use of the Project Documents to complete the subject project or task following CONSULTANT's termination for any reason or to perform additions to or remodeling, replacement or renovations of the subject project or task. The CONSULTANT also acknowledges the COUNTY may be making Project Documents available for review and information to various third parties and hereby consents to such use by the COUNTY.


## **ARTICLE SEVEN MAINTENANCE OF RECORDS**

7.1. The CONSULTANT will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five (5) years from (a) the date of termination this Agreement or (b) the date of the Work Order is completed, whichever is later, or such later date as may be required by law. The COUNTY, or any duly authorized agents or representatives of the COUNTY, shall, free of charge, have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above, or such later date as may be required by law; provided, however, such activity shall be conducted only during normal business hours.

## **ARTICLE EIGHT INDEMNIFICATION**

8.1. To the maximum extent permitted by Florida law, CONSULTANT shall indemnify and hold harmless COUNTY, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT or anyone employed or utilized by the CONSULTANT in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph 8.1.

8.2. To the extent that the Agreement that the work pertains to is a "Professional Services Contract" as defined in Section 725.08(3), Florida Statutes, and the CONSULTANT is a "Design Professional" as defined in Section 725.08(4), Florida Statutes, the indemnification provided herein shall be limited as provided in Section 725.08(1) & (2), Florida Statutes.

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## ARTICLE NINE INSURANCE

9.1. The CONSULTANT shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in SCHEDULE C to this Agreement.

9.2. All insurance shall be from responsible companies duly authorized to do business in the State of Florida.

9.3. All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

9.3.1. All insurance policies, other than the Business Automobile policy, Professional Liability policy, and the Workers Compensation policy, provided by CONSULTANT to meet the requirements of this Agreement shall name Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR, Collier County Government, as an additional insured as to the operations of CONSULTANT under this Agreement and shall contain a severability of interests' provisions.

9.3.2. Companies issuing the insurance policy or policies shall have no recourse against the COUNTY for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of CONSULTANT.

9.3.3. All insurance coverages of CONSULTANT shall be primary to any insurance or self-insurance program carried by the COUNTY, and the "Other Insurance" provisions of any policies obtained by CONSULTANT shall not apply to any insurance or self-insurance program carried by COUNTY.

9.3.4. The Certificates of Insurance, which are to be provided in an Occurrence Form patterned after the current I.S.O. form with no limiting endorsements, must reference and identify this Agreement.

9.3.5. All insurance policies shall be fully performable in Collier County, Florida, and shall be construed in accordance with the laws of the State of Florida.

9.4. The CONSULTANT, its subconsultants and the COUNTY shall waive all rights against each other for damages covered by insurance to the extent insurance proceeds are paid and received by the COUNTY, except such rights as they may have to the proceeds of such insurance held by any of them.

9.5. All insurance companies from whom CONSULTANT obtains the insurance policies required hereunder must meet the following minimum requirements:

9.5.1. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.

9.5.2. The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.



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**ARTICLE TEN  
SERVICES BY CONSULTANT'S OWN STAFF**

10.1. The services to be performed hereunder shall be performed by CONSULTANT's own staff, unless otherwise authorized in writing by the COUNTY. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as independent consultant or otherwise, shall be subject to the prior written approval of the COUNTY. No provision of this Agreement shall, however, be construed as constituting an agreement between the COUNTY and any such other person or firm. Nor shall anything in this Agreement be deemed to give any such party or any third party any claim or right of action against the COUNTY beyond such as may then otherwise exist without regard to this Agreement.

10.2. Attached to each Work Order shall be a Schedule that lists all of the key personnel CONSULTANT intends to assign to perform the Services required under that Work Order. Such personnel shall be committed to the project or task specified in the Work in accordance with the percentages noted in the attached schedule. CONSULTANT shall also identify in that Schedule each subconsultant and subcontractor it intends to utilize with respect to the subject Work Order. All personnel, subconsultants and subcontractors identified in the Schedule shall not be removed or replaced without the COUNTY's prior written consent.

10.3. The CONSULTANT is liable for all the acts or omissions of its subconsultants or subcontractors. By appropriate written agreement, the CONSULTANT shall require each subconsultant or subcontractor, to the extent of the Services to be performed by the subconsultant or subcontractor, to be bound to the CONSULTANT by the terms of this Agreement and any subsequently issued Work Order, and to assume toward the CONSULTANT all the obligations and responsibilities which the CONSULTANT, by this Agreement and any subsequently issued Work Order, assumes toward the COUNTY. Each subconsultant or subcontract agreement shall preserve and protect the rights of the COUNTY under this Agreement, and any subsequently issued Work Order, with respect to the Services to be performed by the subconsultant or subcontractor so that the subconsulting or subcontracting thereof will not prejudice such rights. Where appropriate, the CONSULTANT shall require each subconsultant or subcontractor to enter into similar agreements with its sub-subconsultants or sub-subcontractors.

10.4. The CONSULTANT acknowledges and agrees that the COUNTY is a third-party beneficiary of each contract entered into between CONSULTANT and each subconsultant or subcontractor, however nothing in this Agreement shall be construed to create any contractual relationship between the COUNTY and any subconsultant or subcontractor. Further, all such contracts shall provide that, at the COUNTY's discretion, they are assignable to the COUNTY upon any termination of this Agreement.

**ARTICLE ELEVEN  
WAIVER OF CLAIMS**

11.1. The CONSULTANT's acceptance of final payment for Services provided under any Work Order shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the COUNTY arising out of the Work Order or otherwise related to those Services, and except those previously made in writing in accordance with the terms of this Agreement and identified by CONSULTANT in its final invoice for the subject Work Order as



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unsettled. Neither the acceptance of CONSULTANT's Services nor payment by the COUNTY shall be deemed to be a waiver of any of COUNTY's rights against CONSULTANT.

## ARTICLE TWELVE TERMINATION OR SUSPENSION

12.1. This Agreement is a fixed term contract for the professional services of CONSULTANT. It is agreed that either party hereto shall at any and all times have the right and option to terminate this Agreement by giving to the other party not less than thirty (30) days prior written notice of such termination. Upon this Agreement being so terminated by either party hereto, neither party hereto shall have any further rights or obligations under this Agreement subsequent to the date of termination, except that Services specified to be performed under a previously issued Work Order, shall proceed to completion under the terms of this Agreement.

12.2. The CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for the COUNTY to terminate this Agreement and any Work Orders in effect, in whole or in part, as further set forth in this section, for any of the following reasons: (a) CONSULTANT's failure to begin Services under any particular Work Order within the times specified under that Work Order, or (b) CONSULTANT's failure to properly and timely perform the Services to be provided hereunder or as directed by the COUNTY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT's principals, officers or directors, or (d) CONSULTANT's failure to obey any laws, ordinances, regulations or other codes of conduct, or (e) CONSULTANT's failure to perform or abide by the terms and conditions of this Agreement and any Work Orders in effect, or (f) for any other just cause. The COUNTY may so terminate this Agreement and any Work Orders in effect, in whole or in part, by giving the CONSULTANT seven (7) calendar days written notice of the material default.

12.3. If, after notice of termination of this Agreement as provided for in paragraph 12.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that the COUNTY otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 12.2, then the notice of termination given pursuant to paragraph 12.2 shall be deemed to be the notice of termination provided for in paragraph 12.4, below, and CONSULTANT's remedies against the COUNTY shall be the same as and be limited to those afforded CONSULTANT under paragraph 12.4 below.

12.4. Notwithstanding anything herein to the contrary (including the provisions of paragraph 12.1 above), the COUNTY shall have the right to terminate this Agreement and any Work Orders in effect, in whole or in part, without cause upon seven (7) calendar days written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against the COUNTY shall be limited to that portion of the fee earned through the date of termination, for any Work Orders so cancelled, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other or further recovery against the COUNTY, including, but not limited to, anticipated fees or profits on Services not required to be performed. CONSULTANT must mitigate all such costs to the greatest extent reasonably possible.

12.5. Upon termination and as directed by the COUNTY, the CONSULTANT shall deliver to the COUNTY all original papers, records, documents, drawings, models, and other material set forth

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and described in this Agreement, including those described in Article 6, that are in CONSULTANT's possession or under its control arising out of or relating to this Agreement or any Work Orders.

12.6. The COUNTY shall have the power to suspend all or any portions of the Services to be provided by CONSULTANT hereunder upon giving CONSULTANT two (2) calendar days prior written notice of such suspension. If all or any portion of the Services to be rendered hereunder are so suspended, the CONSULTANT's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

12.7. In the event (i) the COUNTY fails to make any undisputed payment to CONSULTANT within forty-five (45) days after such payment is due as set forth in the Work Order or such other time as required by Florida's Prompt Payment Act or (ii) the COUNTY otherwise persistently fails to fulfill some material obligation owed by the COUNTY to CONSULTANT under this Agreement or subsequently issued Work Order, and (ii) the COUNTY has failed to cure such default within fourteen (14) days of receiving written notice of same from CONSULTANT, then CONSULTANT may stop its performance under the subject Work Order until such default is cured, after giving the COUNTY a second fourteen (14) days written notice of CONSULTANT's intention to stop performance under the applicable Work Order. If the Services are so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the CONSULTANT or its subconsultant or subcontractor or their agents or employees or any other persons performing portions of the Services under contract with the CONSULTANT, the CONSULTANT may terminate the subject Work Order by giving written notice to the COUNTY of CONSULTANT's intent to terminate that Work Order. If the COUNTY does not cure its default within fourteen (14) days after receipt of CONSULTANT's written notice, CONSULTANT may, upon fourteen (14) additional days' written notice to the COUNTY, terminate the subject Work Order and recover from the COUNTY payment for Services performed through the termination date, but in no event shall CONSULTANT be entitled to payment for Services not performed or any other damages from the COUNTY.

### ARTICLE THIRTEEN TRUTH IN NEGOTIATION REPRESENTATIONS

13.1. The CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement or any subsequent Work Order.

13.2.  **CCNA Projects:** In accordance with provisions of Section 287.055, (5)(a), Florida Statutes, the CONSULTANT agrees to execute the required Truth-In-Negotiation Certificate, attached hereto and incorporated herein as Schedule D, certifying that wage rates and other factual unit costs supporting the compensation for CONSULTANT's services to be provided under this Agreement and each subsequent Work Order issued hereafter, if any, are accurate, complete and current at the time of the Agreement or such subsequent Work Order. The CONSULTANT agrees that the original price as set forth in each subsequent issued Work Order, if any, and any additions thereto shall be adjusted to exclude any significant sums by which the COUNTY determines the price as set forth in the Work Order was increased due to inaccurate, incomplete,



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or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of the subject Work Order.

**ARTICLE FOURTEEN  
CONFLICT OF INTEREST**

14.1. CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE FIFTEEN  
MODIFICATION**

15.1. No modification or change in this Agreement shall be valid or binding upon either party unless in writing and executed by the party or parties intended to be bound by it.

15.2. In the event that the need for changes to the Services under a Work Order may arise during the course of the work, the associated tasks may be modified at the request of the Project Manager or his designee. Written authorization from the Project Manager will be required in accordance with the Procurement Ordinance, as amended, and Procedures. For any changes that exceed an existing Work Order amount, the Work Order shall be modified to reflect the increase prior to any related Services being performed.

15.3. All duly executed modifications to Work Orders (including all written modifications or Changes thereto) are hereby incorporated into and made a part of this Agreement by reference.

**ARTICLE SIXTEEN  
NOTICES AND ADDRESS OF RECORD**

16.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the COUNTY shall be in writing and shall be delivered by hand, email, or by United States Postal Service Department, first class mail service, postage prepaid, addressed to the following the COUNTY's address of record:

**Board of County Commissioners for Collier County, Florida**

<b>Division Name:</b>	<u>Sandra Herrera</u>
<b>Division Director:</b>	<u>Procurement Services Division</u>
<b>Address:</b>	<u>3295 Tamiami Trail East</u> <u>Naples, Florida 34112-4901</u>
<b>Administrative Agent/PM:</b>	<u>Evelyn Colon</u>
<b>Telephone:</b>	<u>(239) 252-2667</u>
<b>E-Mail(s):</b>	<u>Evelyn.Colon@colliercountyfl.gov</u>



16.2. All notices required or made pursuant to this Agreement to be given by the COUNTY to the CONSULTANT shall be made in writing and shall be delivered by hand, email or by the United States Postal Service Department, first class mail service, postage prepaid, addressed to the following CONSULTANT's address of record:

**Company Name:** Aquatic Design & Engineering, Inc.  
**Address:** D/B/A Martin Aquatic Design & Engineering  
189 South Orange Avenue, Suite 1220  
Orlando, FL 32801

**Authorized Agent:** Joshua M. Martin, President & Creative Director  
**Attention Name & Title:** \_\_\_\_\_  
**Telephone:** (407) 598-0553  
**E-Mail(s):** josh.@martinaquatic.com

16.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE SEVENTEEN  
MISCELLANEOUS**

17.1. The CONSULTANT, in representing the COUNTY, shall promote the best interests of the COUNTY and assume towards the COUNTY a duty of the highest trust, confidence, and fair dealing.

17.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

17.3. This Agreement is not assignable, or otherwise transferable in whole or in part, by CONSULTANT without the prior written consent of the COUNTY.

17.4. Waivers by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

17.5. The headings of the Articles, Schedules, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Schedules, Parts and Attachments.

17.6. This Agreement, including the referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

17.7. Unless otherwise expressly noted herein, all representations and covenants of the parties shall survive the expiration or termination of this Agreement.



17.8. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

17.9. The terms and conditions of the following Schedules attached hereto are by this reference incorporated herein:

- Schedule A WORK ORDER
- Schedule B RATE SCHEDULE
- Schedule C INSURANCE
- Schedule D **CCNA Projects**: TRUTH IN NEGOTIATION CERTIFICATE
- Schedule E Other: Federal Contract Provisions & Assurances
- Solicitation # 18-7432-AQ, including all Attachment(s), Exhibit(s) and Addendum/Consultant's Proposal

17.10.  **Grant Funded Projects**: In the event of any conflict between or among the terms of any of the Contract Documents and/or the COUNTY's Board approved Executive Summary, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Grant Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the CONSULTANT at the COUNTY's discretion.

17.11. **Applicability**. Sections corresponding to any checked box (  ) expressly apply to the terms of this Agreement.

**ARTICLE EIGHTEEN  
APPLICABLE LAW**

18.1. This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by such laws, rules and regulations of the United States as made applicable to services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

**ARTICLE NINETEEN  
SECURING AGREEMENT/PUBLIC ENTITY CRIMES**

19.1. The CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.  At the time this Agreement is executed, CONSULTANT shall sign and deliver to the COUNTY the Truth-In-Negotiation Certificate identified in Article 13 and attached hereto and made a part hereof as Schedule D. The CONSULTANT's compensation as set forth in each subsequently issued Work Order, if any,



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shall be adjusted to exclude any sums by which the COUNTY determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

19.2. By its execution of this Agreement, CONSULTANT acknowledges that it has been informed by the COUNTY of and is in compliance with the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

**ARTICLE TWENTY  
DISPUTE RESOLUTION**

20.1. Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of CONSULTANT with full decision-making authority and by the COUNTY's staff person who would make the presentation of any settlement reached during negotiations to the COUNTY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of CONSULTANT with full decision-making authority and by the COUNTY's staff person who would make the presentation of any settlement reached at mediation to the COUNTY's board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.

20.2. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

**ARTICLE TWENTY-ONE  
IMMIGRATION LAW COMPLIANCE**

21.1. By executing and entering into this agreement, the CONSULTANT is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the CONSULTANT to



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comply with the laws referenced herein shall constitute a breach of this agreement and the COUNTY shall have the discretion to unilaterally terminate this Agreement immediately.



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*(signature page to follow)*

BLANK SPACE





IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement the day and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS FOR  
COLLIER COUNTY, FLORIDA,

Crystal K. Kinzel, Clerk of Court &  
Comptroller

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Burt L. Saunders, Chairman

Approved as to Form and Legality:

\_\_\_\_\_  
County Attorney

Consultant:

\_\_\_\_\_  
Name

Aquatic Design & Engineering, Inc. d/b/a  
Martin Aquatic Design & Engineering

Consultant's Witnesses:

Kenneth R. Martin

By: Josh Martin

Witness  
Kenneth R. Martin, Treasurer

Josh Martin, President

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Krista Welter

Witness  
Krista Welter, Design Coordinator

\_\_\_\_\_  
Name and Title



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**SCHEDULE A**

**WORK ORDER**

Contract 00-0000 "Name of Contract"  
Contract Expiration Date: \_\_\_\_\_, 20\_\_\_\_

This Work Order is for professional (describe) services for work known as:

Project Name:  
Project No:

The work is specified in the proposal dated \_\_\_\_\_, 20\_\_\_\_ which is attached hereto and made a part of this Work Order. In accordance with Terms and Conditions of the Agreement referenced above, this Work Order is assigned to: Name of Firm

Scope of Work: As detailed in the attached proposal and the following:

- \* Task I -
- \* Task II
- \* Task III

Schedule of Work: Complete work within \_\_\_\_\_ days from the date of the Notice to Proceed which is accompanying this Work Order. The Consultant agrees that any Work Order that extends beyond the expiration date of Agreement # 00-0000 will survive and remain subject to the terms and conditions of that Agreement until the completion or termination of this Work Order.

Compensation: In accordance with the Agreement referenced above, the County will compensate the Firm in accordance with following method(s): Negotiated Lump Sum (NLS) Lump Sum Plus Reimbursable Costs (LS+RC) Time & Material (T&M) (established hourly rate – Schedule A) Cost Plus Fixed Fee (CPFF), (define which method will be used for which tasks) as provided in the attached proposal.

Task I	\$
Task II	\$
Task III	\$
TOTAL FEE	_____ \$

PREPARED BY: \_\_\_\_\_  
Name and Title Date

APPROVED BY: \_\_\_\_\_  
(Dept Name) , Division Director Date

APPROVED BY: \_\_\_\_\_  
type name, Department Head Date

By the signature below, the Firm (including employees, officers and/or agents) certifies, and hereby discloses, that, to the best of their knowledge and belief, all relevant facts concerning past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise) which relates to the proposed work; and bear on whether the Firm has a potential conflict have been fully disclosed.

Additionally, the Firm agrees to notify the Procurement Director, in writing within 48 hours of learning of any actual or potential conflict of interest that arises during the Work Order and/or project duration.

ACCEPTED BY: (Firm Name)  
\_\_\_\_\_  
Name & Title of Authorized Officer Date

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**SCHEDULE B**  
**BASIS OF COMPENSTATION**

**1. SERVICES**

B.1.1. As the COUNTY identifies certain Services it wishes CONSULTANT to provide pursuant to the terms of this Agreement, the COUNTY shall request a proposal from CONSULTANT for such Services, said proposal to be in compliance with the terms of this Agreement. If the parties reach an agreement with respect to such Services, including, but not limited to the scope, compensation and schedule for performance of those Services, a Work Order shall be issued which incorporates the terms of the understanding reached by the parties with respect to such Services.

B.1.1.1. The COUNTY may request that CONSULTANT in writing advise the COUNTY of (i) the estimated time of CONSULTANT's personnel and the estimated fees thereof for the proposed work to be specified in the Work Order; and (ii) the estimated charge to the COUNTY for the reimbursable expenses applicable to the contemplated Services to be performed by CONSULTANT under the proposed Work Order. CONSULTANT shall promptly supply such estimate to the COUNTY based on CONSULTANT's good faith analysis.

B.1.2. All Services to be performed by CONSULTANT pursuant to this Agreement shall be in conformance with the scope of services, which shall be described in a Work Order issued pursuant to the procedures described herein. Reference to the term Work Order herein, with respect to authorization of Services, includes all written Work Order Modifications or Amendments.

B.1.3. All Services must be authorized in writing by the COUNTY in the form of a Work Order. CONSULTANT shall not provide any Services to the COUNTY unless and to the extent they are required in a written Work Order. Any Services provided by CONSULTANT without a written Work Order shall be at CONSULTANT's own risk and the COUNTY shall have no liability for such Services.

B.1.4. Upon issuance of a Work Order as aforesaid, CONSULTANT agrees to promptly provide the Services required thereby, in accordance with the terms of this Agreement and the subject Work Order.

**2. COMPENSATION TO CONSULTANT**

B.2.1. Payments for Basic Services and Additional Basic Services as set forth herein or the Work Order shall be made upon presentation of the CONSULTANT's invoice approved by the COUNTY.

B.2.2. Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this Agreement.



B.2.3. For the Services provided for in this Agreement, the COUNTY agrees to make payments to CONSULTANT based upon CONSULTANT's Direct Labor Costs and Reimbursable Expenses or as a Lump Sum.

B.2.4.  Time and Material Fees: Direct Labor Costs mean the actual salaries and wages (basic, premium and incentive) paid to CONSULTANT's personnel, with respect to this Agreement, including all indirect payroll related costs and fringe benefits, all in accordance with and not in excess of the rates set forth in the Attachment 1 to this Schedule B. With each monthly Application for Payment, CONSULTANT shall submit detailed time records, and any other documentation reasonably required by the COUNTY, regarding CONSULTANT's Direct Labor Costs incurred at the time of billing, to be reviewed and approved by the COUNTY. There shall be no overtime pay without the COUNTY's prior written approval.

B.2.4.1. For Additional Services provided pursuant to Article 2 of the Agreement, if any, the COUNTY agrees to pay CONSULTANT a negotiated total fee and Reimbursable Expenses based on the services to be provided and as set forth in the Amendment authorizing such Additional Services. The negotiated fee shall be based upon the rates specified in Attachment 1 to this Schedule B and all Reimbursable Expenses shall comply with the provision of Section B.3.4.1 below. There shall be no overtime pay on Additional Services without the COUNTY's prior written approval.

B.2.4.2. Notwithstanding anything herein to the contrary, in no event may CONSULTANT's monthly billings, on a cumulative basis, exceed the sum determined by multiplying the applicable not to exceed task(s) limits by the percentage the COUNTY has determined CONSULTANT has completed such task as of that particular monthly billing.

B.2.5.  Lump Sum Fees: The fees noted in the Work Order shall constitute the lump sum amount to be paid to CONSULTANT for the performance of the Services. CONSULTANT shall submit to the COUNTY as part of its monthly invoice a progress report reflecting the status, in terms of the total work effort estimated to be required for the completion of the Services authorized under the Work Order and any then-authorized Additional Services, as of the last day of the subject monthly billing cycle. Among other things, the report shall show all Service items and the percentage complete of each item. There shall be no overtime pay without the COUNTY's prior written approval.

B.2.6. For Additional Services provided pursuant to Article 2 of the Agreement, the COUNTY agrees to pay CONSULTANT a negotiated total fee and Reimbursable Expenses based on the services to be provided and as set forth in the Amendment authorizing such Additional Services. The negotiated fee shall be based upon the rates specified in Attachment 1 to this Schedule B and all Reimbursable Expenses shall comply with the provisions of Section 3 below. There shall be no overtime pay on Services or Additional Services without COUNTY's prior written approval.

B.2.7. Unless specific rates have been established in Attachment 1, attached to this Schedule B, CONSULTANT agrees that, with respect to any subconsultant or subcontractor to be utilized by CONSULTANT for a particular Work Order or Additional Services, CONSULTANT shall be limited to a maximum markup of five percent (5%) on the fees and expenses associated with such subconsultants and subcontractors.

B.2.8. The CONSULTANT agrees to furnish to the COUNTY, after the end of each calendar month, or as specified in the Work Order, statement of charges for the Services performed and



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rendered by CONSULTANT during that time period, and for any the COUNTY authorized reimbursable expenses as herein below defined, incurred and/or paid by CONSULTANT during that time period. The monthly statement shall be in such form and supported by such documentation as may be required by the COUNTY. Notwithstanding anything herein to the contrary, the CONSULTANT shall submit no more than one (1) invoice per month for both Basic Services and Additional Services. Invoices shall be reasonably substantiated, identify the services rendered and must be submitted in a form and manner required by the COUNTY.

B.2.9. Invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no signature, etc.) shall be returned to CONSULTANT for correction. Invoices shall be submitted on CONSULTANT's letterhead and must include the Purchase Order Number and Project name and shall not be submitted more than one time monthly.

B.2.10. Notwithstanding anything in the Agreement to the contrary, CONSULTANT acknowledges and agrees that in the event of a dispute concerning payments for Services performed under this Agreement, CONSULTANT shall continue to perform the Services required of it under this Agreement, as directed by the COUNTY, pending resolution of the dispute provided that the COUNTY continues to pay to CONSULTANT all amounts that the COUNTY does not dispute are due and payable.

### **3. REIMBURSABLE EXPENSES**

B.3.1. Payments for Additional Services of CONSULTANT as defined in Section 2 hereinabove and for reimbursable expenses will be made monthly upon presentation of a detailed invoice with supporting documentation.

B.3.2. The CONSULTANT shall obtain the prior written approval of the COUNTY before incurring any reimbursable expenses, and absent such prior approval, no expenses incurred by CONSULTANT will be deemed to be a reimbursable expense.

B.3.3. The COUNTY agrees to reimburse CONSULTANT for all necessary and reasonable reimbursable expenses incurred or paid by CONSULTANT in connection with CONSULTANT's performance of the Services, at its direct cost with no markup; to the extent such reimbursement is permitted in the Work Order and in accordance with Section 112.061, F.S., or as set forth in this Agreement. Reimbursable expenses shall be invoiced for the expenditures incurred by the CONSULTANT as stated below.

5.3.3.1. Cost for reproducing documents that exceed the number of documents described in this Agreement and postage and handling of Drawings and Specifications including duplicate sets at the completion of each Work Order for the COUNTY's review and approval.

5.3.3.2. Travel expenses reasonably and necessarily incurred with respect to Project related trips, to the extent such trips are approved by the COUNTY. Such expenses, if approved by the COUNTY, may include coach airfare, standard accommodations and meals, all in accordance with Section 112.061, F.S. Further, such expenses, if approved by the COUNTY, may include mileage for trips that are from/to destinations outside of Collier or Lee Counties. Such trips within Collier and Lee Counties are expressly excluded.

5.3.3.3. Expense of overtime work requiring higher than regular rates approved in advance and in writing by the COUNTY.



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5.3.3.4. Permit Fees required by the Project.

5.3.3.5. Expense of models for the COUNTY's use.

5.3.3.6. Fees paid for securing approval of authorities having jurisdiction over the Work Order required under the applicable Work Order.

5.3.3.7. Other items on request and approved in writing by the COUNTY.

5.3.4. The CONSULTANT shall bear and pay all overhead and other expenses, except for authorized reimbursable expenses, incurred by CONSULTANT in the performance of the Services.

5.3.5. Records of Reimbursable Expenses shall be kept on a generally recognized accounting basis.



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**SCHEDULE B - ATTACHMENT 1  
RATE SCHEDULE**

Title	Hourly Rate
Founding Principal (Principal)	\$200
Creative Director (Principal)	\$200
Studio Director (Principal)	\$200
Senior Project Manager (Senior Project Manager)	\$130
Theme Entertainment Manager (Senior Project Manager)	\$130
Project Manager	\$120
Senior Engineer	\$150
Project Engineer (Engineer)	\$150
Senior Engineering Coordinator (Engineer)	\$150
Design Studio Manager (Senior Planner)	\$130
Design Manager (Senior Planner)	\$130
Engineering Coordinator (Planner)	\$130
Electrical Controls Coordinator (Planner)	\$130
Senior Project Coordinator (Planner)	\$130
Design Coordinator (Senior Designer)	\$115
Senior 3D Designer (Senior Designer)	\$115
Project Coordinator (Designer)	\$115
Project Accountant (Clerical/Administrative)	\$41
CADD Technician	\$57
Production Director (Senior Architect)	\$150
Operations Director (Senior Architect)	\$150
Design & Technology Manager (Architect)	\$150

The above hourly rates are applicable to Time and Materials task(s) only. The above list may not be all inclusive. Hourly rates for additional categories required to provide particular project services shall be mutually agreed upon by the County and firm, in writing, on a project by project basis, as needed, and will be set forth in the Work Order agreed upon by the parties.

**Grant Funded:** The above hourly rates are for purposes of providing estimate(s), as required by the grantor agency.



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**SCHEDULE C**  
**INSURANCE COVERAGE**

1. The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If CONSULTANT has any self-insured retentions or deductibles under any of the below listed minimum required coverages, CONSULTANT must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be CONSULTANT's sole responsibility.
2. The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.
3. Coverages shall be maintained without interruption from the date of commencement of the services until the date of completion and acceptance of the Project by the COUNTY or as specified in this Agreement, whichever is longer.
4. Certificates of insurance acceptable to the COUNTY shall be filed with the COUNTY within ten (10) calendar days after Notice of Award is received by CONSULTANT evidencing the fact that CONSULTANT has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to the COUNTY, on a timely basis, if requested by the COUNTY. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the COUNTY. CONSULTANT shall also notify the COUNTY, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer, and nothing contained herein shall relieve CONSULTANT of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by CONSULTANT hereunder, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.
5. All insurance coverages of the CONSULTANT shall be primary to any insurance or self-insurance program carried by the COUNTY applicable to this Project.
6. The acceptance by the COUNTY of any Certificate of Insurance does not constitute approval or agreement by the COUNTY that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.
7. CONSULTANT shall require each of its subconsultants to procure and maintain, until the completion of the subconsultant's services, insurance of the types and to the limits specified in this Section except to the extent such insurance requirements for the subconsultant are expressly waived in writing by the COUNTY.
8. Should at any time the CONSULTANT not maintain the insurance coverages required herein, the COUNTY may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the CONSULTANT for such coverages purchased. If CONSULTANT fails to reimburse the COUNTY for such costs within thirty (30) days after demand,

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the COUNTY has the right to offset these costs from any amount due CONSULTANT under this Agreement or any other agreement between the COUNTY and CONSULTANT. The COUNTY shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the COUNTY to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Agreement.

9. If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the services required hereunder or termination of the Agreement, the CONSULTANT shall furnish to the COUNTY, in triplicate, renewal or replacement Certificate(s) of Insurance not later than three (3) business days after the renewal of the policy(ies). Failure of the Contractor to provide the COUNTY with such renewal certificate(s) shall be deemed a material breach by CONSULTANT and the COUNTY may terminate the Agreement for cause.

**10. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY.**

Required by this Agreement?  Yes  No

Workers' Compensation and Employers' Liability Insurance shall be maintained by the CONSULTANT during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

- a. Worker's Compensation - Florida Statutory Requirements
- b. Employers' Liability - The coverage must include Employers' Liability with a minimum limit of \$500,000 for each accident.

The insurance company shall waive all claims rights against the COUNTY and the policy shall be so endorsed.

11. **United States Longshoreman's and Harbor Worker's Act** coverage shall be maintained where applicable to the completion of the work. Required by this Agreement?  Yes  No

12. **Maritime Coverage (Jones Act)** shall be maintained where applicable to the completion of the work.

Required by this Agreement?  Yes  No

**13. COMMERCIAL GENERAL LIABILITY.**

Required by this Agreement?  Yes  No

A. Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the CONSULTANT. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be

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maintained for a period of not less than five (5) years following the completion and acceptance by the COUNTY of the work under this Agreement. Limits of Liability shall not be less than the following:

Coverage shall have minimum limits of \$1,000,000 Per Occurrence, \$2,000,000 aggregate.

B. The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you." Applicable deductibles or self-insured retentions shall be the sole responsibility of CONSULTANT. Deductibles or self-insured retentions carried by the CONSULTANT shall be subject to the approval of the Risk Management Director or his/her designee.

14. Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR, Collier County Government shall be listed as the Certificate Holder and included as an "Additional Insured" on the Insurance Certificate for Commercial General Liability where required. The insurance shall be primary and non-contributory with respect to any other insurance maintained by, or available for the benefit of, the Additional Insured and the Contractor's policy shall be endorsed accordingly. Contractor shall ensure that all subcontractors comply with the same insurance requirements that the Contractor is required to meet.

15. **Watercraft Liability** coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than the Commercial General Liability limit shown in subparagraph (1) above if applicable to the completion of the Services under this Agreement.

Required by this Agreement?  Yes  No

16. **Aircraft Liability** coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement.

Required by this Agreement?  Yes  No

17. **AUTOMOBILE LIABILITY INSURANCE.**

Required by this Agreement?  Yes  No

**Business Auto Liability:** Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-The ownership.

18. **TECHNOLOGY ERRORS and OMISSIONS INSURANCE.**

Required by this Agreement?  Yes  No

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**Technology Errors and Omissions Insurance:** Coverage shall have minimum limits of \$ \_\_\_\_\_ Per Occurrence.

**19. CYBER INSURANCE.**

Required by this Agreement?  Yes  No

**Cyber Insurance:** Coverage shall have minimum limits of \$ \_\_\_\_\_ Per Occurrence.

**20. UMBRELLA LIABILITY.**

A. Umbrella Liability may be maintained as part of the liability insurance of the CONSULTANT and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability, and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

B. The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

**21. PROFESSIONAL LIABILITY INSURANCE.**

Required by this Agreement?  Yes  No

A. **Professional Liability:** Shall be maintained by the CONSULTANT to ensure its legal liability for claims arising out of the performance of professional services under this Agreement. CONSULTANT waives its right of recovery against COUNTY as to any claims under this insurance. Such insurance shall have limits of not less than \$ 1,000,000 each claim and aggregate.

B. Any deductible applicable to any claim shall be the sole responsibility of the CONSULTANT. Deductible amounts are subject to the approval of the COUNTY.

C. The CONSULTANT shall continue this coverage for this Project for a period of not less than five (5) years following completion and acceptance of the Project by the COUNTY.

D. The policy retroactive date will always be prior to the date services were first performed by CONSULTANT or the COUNTY, and the date will not be moved forward during the term of this Agreement and for five years thereafter. CONSULTANT shall promptly submit Certificates of Insurance providing for an unqualified written notice to the COUNTY of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In addition, CONSULTANT shall also notify the COUNTY by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. CONSULTANT shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by the COUNTY.

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**22. VALUABLE PAPERS INSURANCE.**

In the sole discretion of the COUNTY, CONSULTANT may be required to purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

**23. PROJECT PROFESSIONAL LIABILITY.**

A. If the COUNTY notifies CONSULTANT that a project professional liability policy will be purchased, then CONSULTANT agrees to use its best efforts in cooperation with THE COUNTY and the COUNTY's insurance representative, to pursue the maximum credit available from the professional liability carrier for a reduction in the premium of CONSULTANT's professional liability policy. If no credit is available from CONSULTANT's current professional policy underwriter, then CONSULTANT agrees to pursue the maximum credit available on the next renewal policy, if a renewal occurs during the term of the project policy (and on any subsequent professional liability policies that renew during the term of the project policy). CONSULTANT agrees that any such credit will fully accrue to the COUNTY. Should no credit accrue to the COUNTY, the COUNTY and CONSULTANT, agree to negotiate in good faith a credit on behalf of the COUNTY for the provision of project-specific professional liability insurance policy in consideration for a reduction in CONSULTANT's self-insured retention and the risk of uninsured or underinsured consultants.

B. The CONSULTANT agrees to provide the following information when requested by the COUNTY or the COUNTY's Project Manager:

1. The date the professional liability insurance renews.
2. Current policy limits.
3. Current deductibles/self-insured retention.
4. Current underwriter.
5. Amount (in both dollars and percent) the underwriter will give as a credit if the policy is replaced by an individual project policy.
6. Cost of professional insurance as a percent of revenue.
7. Affirmation that the design firm will complete a timely project errors and omissions application.

C. If the COUNTY elects to purchase a project professional liability policy, CONSULTANT to be insured will be notified and the COUNTY will provide professional liability insurance, naming CONSULTANT and its professional subconsultants as named insureds.



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END OF SCHEDULE C

this schedule is not applicable

**SCHEDULE D**

**TRUTH IN NEGOTIATION CERTIFICATE**

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, Aquatic Design & Engineering, Inc. D/B/A Martin Aquatic Design & Engineering (*company's name*) hereby certifies that wages, rates and other factual unit costs supporting the compensation for the services of the CONSULTANT to be provided under the Professional Services Agreement, concerning "Professional Services Library-Aquatics Engineering and Design Services Category" project is accurate, complete and current as of the time of contracting.

BY:   
TITLE: President & Creative Dir  
DATE: 5 June 2020



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## SCHEDULE E

Other: Federal Contract Provisions and Assurances

(Description)

following this page (pages 1 through 9)

this schedule is not applicable



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EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**FEDERAL EMERGENCY MANAGEMENT AGENCY  
PUBLIC ASSISTANCE**

This project activity is funded in whole or in part by the Federal Government, or an Agency thereof. Federal Law requires that the Applicant's contracts relating to the project include certain provisions.

Per uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a contract (including a purchase order).

**Compliance with Federal Law, Regulations and Executive Orders:** The Sub-Recipient (County) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant 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.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with any and all other relevant Federal, State, and local laws, regulations, codes and ordinances:

- o 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- o 44 C.F.R. Part 206
- o 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
- o FEMA Public Assistance Program and Policy Guide, 2017 (in effect for incidents declared on or after April 1, 2017)

**Reporting:** The contractor will provide any information required to comply with the grantor agency requirements and regulations pertaining to reporting. It is important that the contractor is aware of the reporting requirements of the County, as the Federal or State granting agency may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the granting agency.

**Access to Records:** (1) The contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

**DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

**No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

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



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EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**Energy Efficiency Standards:** The contractor agrees to 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.

**Termination:** Should the Contractor be found to have failed to perform his services in a manner satisfactory to the County as per this Agreement, the County may terminate said Agreement for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be sole judge of non-performance. In the event that the County terminates this Agreement, Contractor's recovery against the County shall be limited to that portion of the Agreement Amount earned through the date of termination. The Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.

**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 County 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 County 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.

**Changes:** See Standard Purchase Order Terms and Conditions.

**Procurement of Recovered Materials (§200.322) (Over \$10,000):** (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

**Suspension and Debarment:** (1) 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). (2) 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. (3) This certification is a material representation of fact relied upon by the County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) 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.

**Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms §200.321** (a) The Solicitor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. (b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;



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EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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- (3) 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;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) 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
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Equal Employment Opportunity Clause (§60-1.4):** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

During the performance of this contract, the contractor agrees as follows:

- I. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- II. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- III. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- IV. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- V. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.



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FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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- VI. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- VII. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- VIII. The contractor will include the provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):** Where applicable, all contracts awarded by the solicitor 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).

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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



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FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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

**Administrative, Contractual, or Legal Remedies (over \$150,000):** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

**Clean Air Act and Federal Water Pollution Control Act: (over \$150,000)** (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (2) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (3) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. (4) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000):** 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."

#### State Provisions

**Convicted Vendor and Discriminatory Vendors List** 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.

**Lobbying:** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or any state agency.

**Inspector General Cooperation:** The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**Record Retention** - The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is made and shall allow the County, FDEM, or its designee's access to such records upon request.



2020.06.05

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Acknowledgement of Terms, Conditions, and Grant Clauses**


**Certification**

If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Department for review and approval. The vendor agrees to include in the subcontract that (1) 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 Department and 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. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Martin Aquatic Design & Engineering

Date 12/04/2019

Authorized Signature 

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2020.06.05



EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

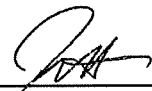
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Collier County, 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 contract shall attach an explanation to this form.

CONTRACTOR

Martin Aquatic Design & Engineering

By:   
Signature

Josh Martin- President & Creative Director  
Name and Title

189 South Orange Avenue, Suite 1220  
Street Address

Orlando, Florida 32801  
City, State, Zip


960279362  
DUNS Number

12/04/2019  
Date

Sub-Recipient Name: Collier County Board of County Commissioners

DEM Contract Number: Z0001

FEMA Project Number: 4337DRFLP0000001

 2020.06.05



<b>COLLIER COUNTY</b>					
<b>ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT</b>					
Status will be verified. Unverifiable statuses will require the Vendor/Prime Contractor to either provide a revised statement or provide source documentation that validates a status. Contractor means an entity that receives a contract.					
<b>A. VENDOR/PRIME CONTRACTOR INFORMATION</b>					
PRIME NAME		PRIME FEID NUMBER		CONTRACT DOLLAR AMOUNT	
Martin Aquatic Design & Engineering		59-3361211			
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE (DBE/MBE/WBE)? OR HAVE A SMALL DISADVANTAGED BUSINESS 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? OR A SERVICE DISABLED VETERAN?		VETERAN?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	IS THE ACTIVITY OF THIS CONTRACT,	
		DBE?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	CONSTRUCTION ?	Y <input type="checkbox"/> N <input type="checkbox"/>
		MBE?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	CONSULTATION?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/>
		WBE?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	OTHER?	Y <input type="checkbox"/> N <input type="checkbox"/>
		SDB 8A?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>		
IS THIS SUBMISSION A REVISION? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>			IF YES, REVISION NUMBER _____		
<b>B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION</b>					
DBE, MBE, WBE VET, SMB8A	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)		PERCENT OF CONTRACT DOLLARS
TOTALS:					
<b>C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR</b>					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER	
Josh Martin		12/04/2019		President & Creative Director	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER	
josh@martinaquatic.com		1.407.598.0553		1.407.992.9344	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.					
ETHNICITY		CODE			
Black American		BA			
Hispanic American		HA			
Native American		NA			
Subcont. Asian American		SAA			
Asian-Pacific American		APA			
Non-Minority Women		NMW			
Other: not of any other group listed		O			
<b>D. SECTION TO BE COMPLETED BY COLLIER COUNTY</b>					
DEPARTMENT NAME		COLLIER CONTRACT # (IFB/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT	
ACCEPTED BY:				DATE	


 2020.06.05



EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**LOBBYING CERTIFICATION**  
**(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Martin Aquatic Design & Engineering

Contractor (Firm Name)



Signature of Contractor's Authorized Official

Josh Martin- President & Creative Director

Name and Title of Contractor's Authorized Official

12/04/2019

Date



### E-Verify Affidavit Instructions

Beginning January 1, 2021, pursuant to Section 448.095 Florida Statutes, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-verify system.

1. Please create an Affidavit on your company's letter head in a similar form to that attached below.
2. Have it signed and notarized.
3. Then attach the notarized affidavit and the proof of registration where indicated.

ATTACH NOTARIZED AFFIDAVIT HERE



ATTACH PROOF OF REGISTRATION HERE





### CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that \_\_\_\_\_ *[insert contractor company name]* does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy of \_\_\_\_\_ *[insert contractor company name]* proof of registration in the E-Verify system is attached to this Affidavit.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ *[name of officer or agent, title of officer or agent]* of \_\_\_\_\_ *[name of contractor company acknowledging]*, a \_\_\_\_\_ *[state or place of incorporation]* corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ *[type of identification]* as identification.

[Notary Seal]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name typed, printed or stamped

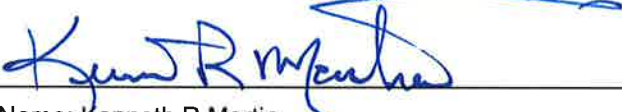
My Commission Expires: \_\_\_\_\_

### CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that Aquatic Design & Engineering, Inc. d/b/a Martin Aquatic Design & Engineering does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.


All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy Aquatic Design & Engineering, Inc. d/b/a Martin Aquatic Design & Engineering proof of registration in the E-Verify system is attached to this Affidavit.

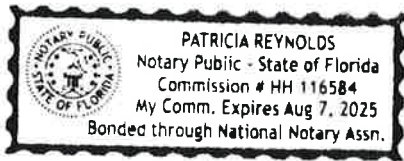
  
 \_\_\_\_\_  
 Print Name: Kenneth R Martin  
 Title: Founding Principal / Treasurer / Director  
 Date: 19 May 2022

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 19th day of May, 2022, by \_\_\_\_\_ [name of officer or agent, title of officer or agent] of Aquatic Design & Engineering, Inc. d/b/a Martin Aquatic Design & Engineering, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ [type of identification] as identification.

  
 \_\_\_\_\_  
 Notary Public

[NOTARY SEAL]



Patricia Reynolds  
Name typed, printed or stamped

My Commission Expires: 8/7/2025



Department of Homeland Security

Report Prepared: 05/05/2022

E-Verify

Page: 1 of 1

## Corporate Overview of Pilot Usage for Fiscal Year 2021

PILOT:		STATE:			
PARENT COMPANY:					
COMPANY NAME:					
Pilot	Company Name	City	State	Number of Queries	Number of Cases Closed
WEB-BP	Aquatic Design & Engineering, Inc.	Orlando	FL	3	3
<b>Sub-Total:</b>		<b>1</b>		<b>3</b>	<b>3</b>
<b>Total Number of Companies:</b>		1			
<b>Total Number of Queries for All Companies:</b>		3			
<b>Total Number of Closed Cases for All Companies:</b>		3			

**Note:** The data displayed is current as of the previous day.

**RESOLUTION 2022-75  
MARTIN AQUATIC DESIGN & ENGINEERING PIGGYBACK**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING THE COLLIER COUNTY CONTRACT (#187432-AQ) WITH MARTIN AQUATIC DESIGN & ENGINEERING, FOR AQUATIC DESIGN & ENGINEERING SERVICES; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast desires to utilize the Collier County contract for aquatic design & engineering services from Martin Aquatic Design & Engineering; and

**WHEREAS**, Martin Aquatic Design & Engineering, desires to provide the above-mentioned services on an as-needed bases 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 CONTRACT** The City Council of the City of Palm Coast hereby approves the terms and conditions of the piggybacking the Collier County contract with Martin Aquatic Design & Engineering for aquatic design & engineering services, 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 its passage and adoption.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 7<sup>th</sup> day of June 2022.


ATTEST:

  
\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

CITY OF PALM COAST

  
\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachment: Exhibit "A" – Piggyback Contract Martin Aquatic Design & Engineering



# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>	\$1,213,590.00
<b>Division</b>	ENGINEERING	<b>Account #</b>	21066015-063000-61015
<b>Subject:</b> RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., A WORK ORDER WITH PEGASUS ENGINEERING, LLC., FOR GRANT COMPLIANCE AND A PROJECT CONTINGENCY FOR THE LONG CREEK NATURE PRESERVE			
<b>Presenter:</b> Eric Gebo, Architect III			
<b>Attachments:</b>			
<ol style="list-style-type: none"> <li>1. Presentation</li> <li>2. Resolution</li> <li>3. Draft Contract</li> <li>4. Notice of Intent to Award</li> <li>5. Executive Summary</li> <li>6. Work Order Proposals (Grant Compliance)</li> </ol>			
<b><u>Background:</u></b>			
<b>Council Priority:</b>			
<b>D. Sustainable Environment &amp; Infrastructure</b>			
<p>In 2008 the City acquired 9+ acres in the amount of \$4,510,145.00 with Flagler County Environmentally Sensitive Lands Program (ESL) providing funding in the amount of \$2,255,072.50 and the State of Florida Community Trust (FCT) providing the funding in the amount of \$2,255,072.50. FCT Grant required a Management Plan that contains 19 specific Special Management Conditions from commitments made in the grant application that received scoring points; failure to complete these conditions is considered a default of the grant contract. Below is a listing of the plan objectives:</p> <ul style="list-style-type: none"> <li>• Protect natural resources</li> <li>• Stabilization of shoreline along the College Waterway</li> <li>• Provide recreational opportunities and urban open space</li> <li>• Provide water access to College Waterway and Long Creek</li> <li>• Provide environmental and historic educational programs (minimum of 12 annually)</li> <li>• A staffed Nature Center to provide year-round education programming on the natural environment and history of the area with education programs and on-going exhibits.</li> </ul> <p>The park is located between College Waterway and Long Creek in the City of Palm Coast. Long Creek Nature Preserve fills a gap in the greenway between neighborhoods that border Long Creek and Big Mulberry Branch Creek natural corridors. Currently Phase 1 improvements included the construction of a path &amp; boardwalk to a new canoe/kayak launch</p>			

into Long Creek, a non-motorized boat launch into College Waterway, installation of shoreline stabilization along College Water, construction of a fishing pier along College Waterway, and an entrance from Palm Harbor Parkway onto the site with an area for parking and a pedestrian/bicycle access by means of a multi-purpose trail on Palm Harbor Parkway and a path connection to Colchester Land. Its natural beauty provides a backdrop for the planned Environmental Education Center (Future Phase) to serve as a living laboratory for environmental education programs. A major archeological resource, the "Hernandez Landing Site," relates to the early 1800's Plantation Period in Florida and is located just east of the project site on City-owned property. This resource is slated for reconstruction and its interpretation will convey the history of this landing site and its importance in regional and statewide history. This project is part of Council's goal to provide affordable, and enjoyable options for cultural, educational, recreational and leisure-time events.

On March 31, 2009, City Council gave approval to submit a grant application to Florida Inland Navigation District (FIND) for Design and Permitting of Long Creek Nature Preserve. The City of Palm Coast was awarded the grant. On January 5, 2010, City Council gave approval to execute the grant agreement in the amount of \$75,000.00. On August 16, 2011, City Council gave approval for the professional services contract to design, permit, provide bidding assistance and construction administration for the development of Long Creek Nature Preserve as a City Park.

On March 19, 2013, City Council gave approval to submit a grant application to FIND for Construction of Phase I of Long Creek Nature Preserve. The City of Palm Coast was awarded the grant in the amount of \$167,843.00. On October 1, 2013, City Council gave approval to commence with construction of Phase I Improvements with Saboungi Construction Inc.

To further enhance the recreational and educational uses within the park and contiguous waterways, a navigation enhancement project is proposed for the installation of approximately 27 markers within Long Creek (starting at Long Creek Nature Preserve and terminating at the Intracoastal Waterway) and an interpretative kiosk installed at each of the park's canoe/kayak launches (College Waterway and Long Creek). The project will enhance park users' experiences by highlighting connections to other regional attractions; provide navigation aids for novices, incorporation of tidal and weather data web links for safety purposes. On March 14, 2014, City Council gave approval to submit a grant application to FIND. On November 4, 2014, FIND awarded the grant in a not-to-exceed amount of \$10,000 as part of a required 50/50% match of the project cost.

In 2019 as part of city staff continuing efforts to seek and identify grants an opportunity to apply for a grant to construct the remaining boardwalk and overlooks was identified and a grant application was submitted. On September 27, 2019, the City received notification that the Recreational Trails Program application has been awarded funding and on November 20, 2020 the City received Draft Agreement for legal review processing.

On April 6, 2021, Council approved a Work Order with CPH Engineers to provide environmental and engineering services associated with obtaining SJRWMD & USACE permits and to prepare bid documents and construction drawings in the amount of \$53,435.00.

On August 16, 2023, staff advertised this project (ITB-SWE-23-57) and received two (2) bids, one (1) deemed non-responsive. City staff recommends awarding the contract to Saboungi

Construction, Inc. in the amount of \$1,031,100 for Phase II construction of the Long Creek Nature Preserve.

Under the existing contract (RFSQ-SWE-22-88), staff negotiated a scope and fee not-to-exceed \$32,490 with Pegasus Engineering, LLC., for construction engineering services (CEI). City staff has determined that the cost for engineering services are reasonable and fair and are consistent with these types of services for a project of this size and scope.

This item is to approve a Contract with Saboungi Construction, Inc., in the amount of \$1,031,100, a work order with Pegasus Engineering in the amount of \$32,490 and a Project contingency in the amount of \$150,000. For a total amount of \$1,213,590. Funds for this project are budgeted in the Recreation Impact Fund for FY 24.

**SOURCE OF FUNDS WORKSHEET FY 24**

<b>Rec/Impact/Long Creek 21066015-063000-61015</b>	<b>\$1,330,000.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Order Contractrs	\$0.00
Current (WO/Contract)	<u>\$1,213,590.00</u>
<b>Balance</b>	<b>\$116,410.00</b>

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION, INC., INC, A WORK ORDER WITH PEGASUS ENGINEERING, LLC, FOR GRANT COMPLIANCE AND A PROJECT CONTINGENCY FOR THE LONG CREEK NATURE PRESERVE**





# **Long Creek Nature Preserve Phase 2**

Presenting:  
Eric Gebo, Architect, City of Palm Coast Stormwater & Engineering

# Long Creek Nature Preserve – Phase 2

## Connection to Waterways



# Long Creek Nature Preserve – Phase 2

## Project Funding History and City Commitments

### Property Acquisition

- 2008 purchase of 9+ acres for \$4,510,145.00
- Florida Community Trust (FCT) provided \$2,255,072.50
- Flagler County Environmentally Sensitive Lands Program (ESL) provided \$2,255,072.50

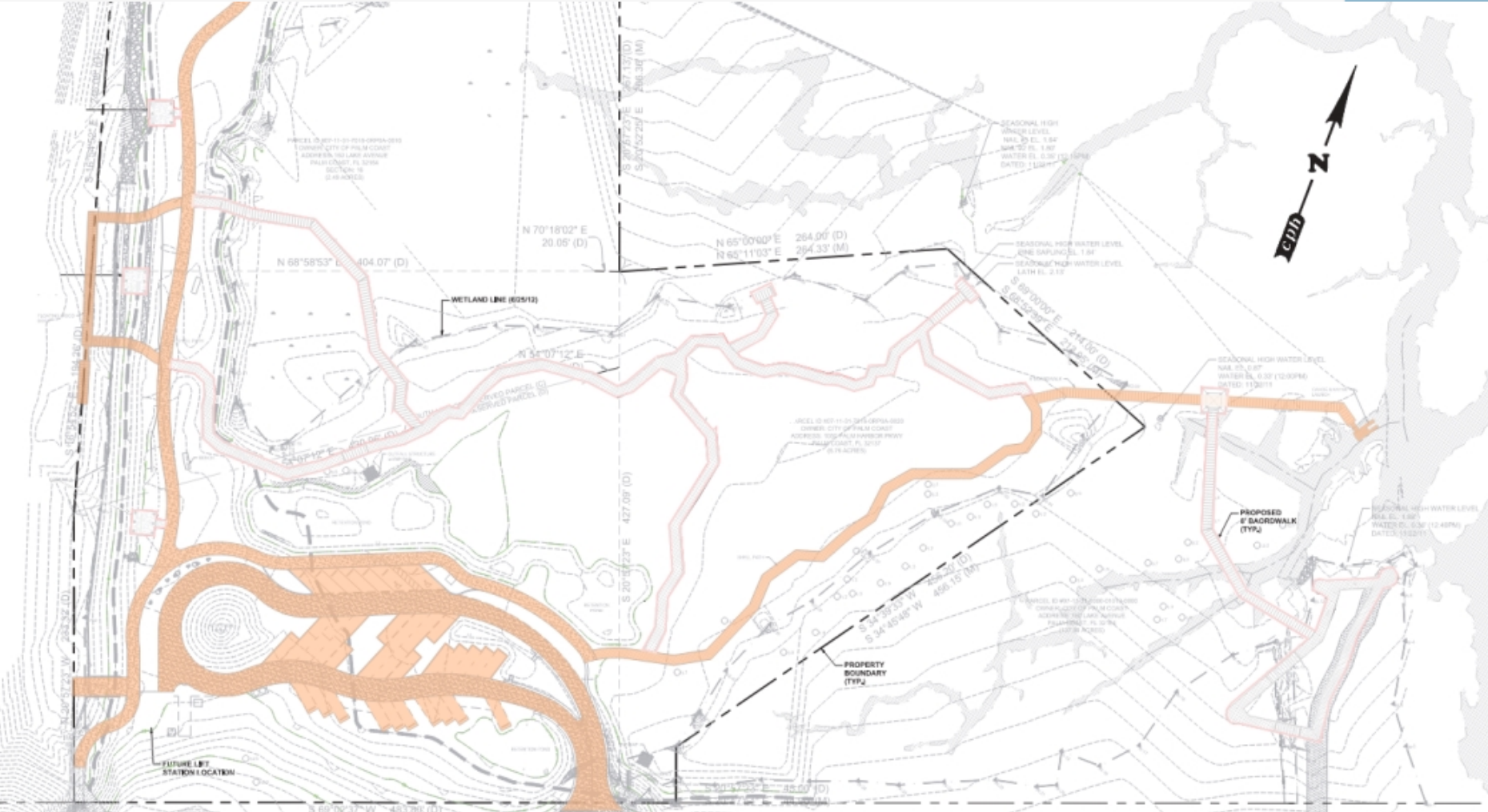
### City Commitments

- Recreational facilities, including a fishing pier, picnic pavilion, wildlife observation platform and canoe/kayak launch
- A kiosk and interpretive signs
- Educational classes or programs
- A staffed nature center
- A walking trail at least  $\frac{1}{4}$  mile shall be provided



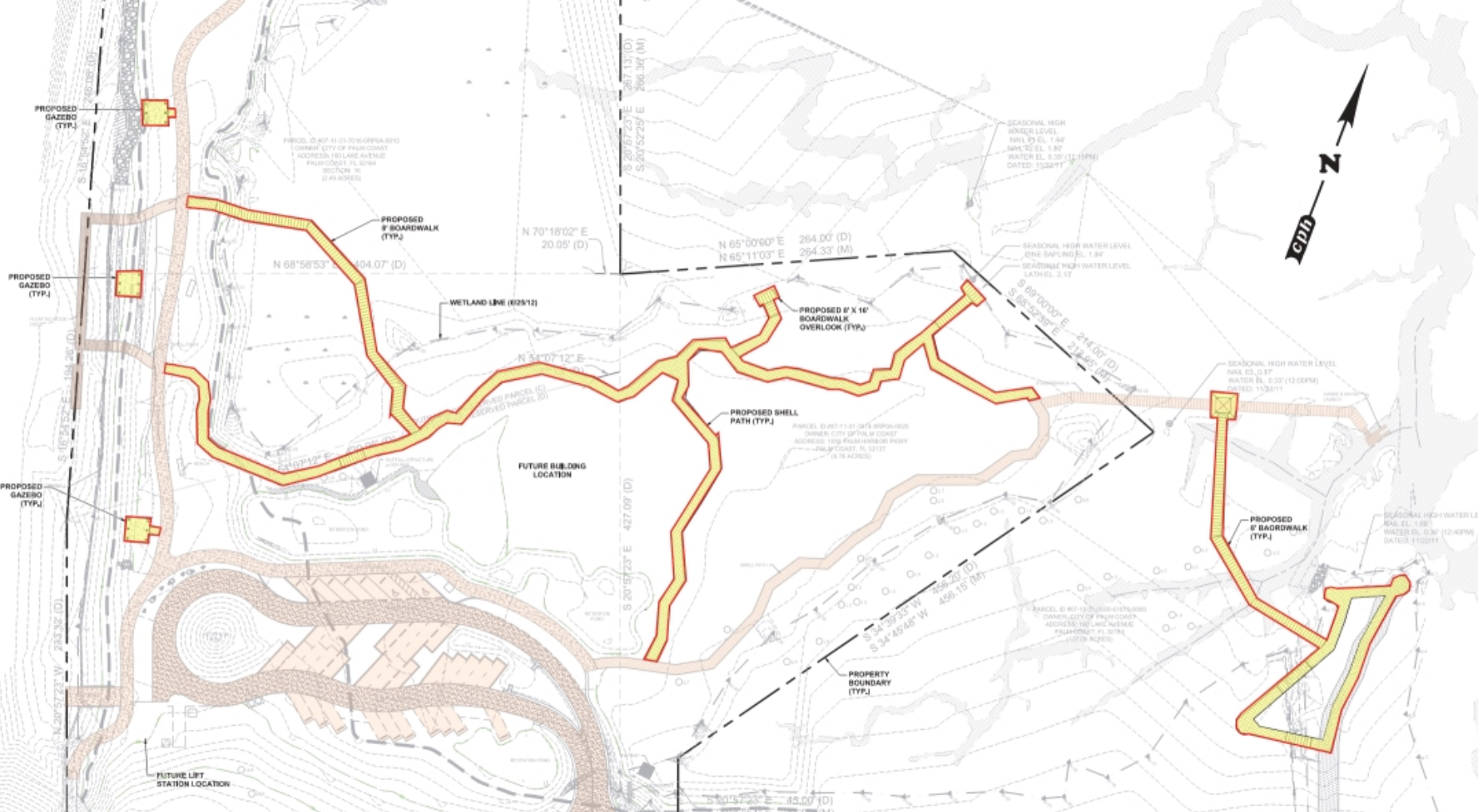
# Long Creek Nature Preserve - Phase 2

## Phase 1



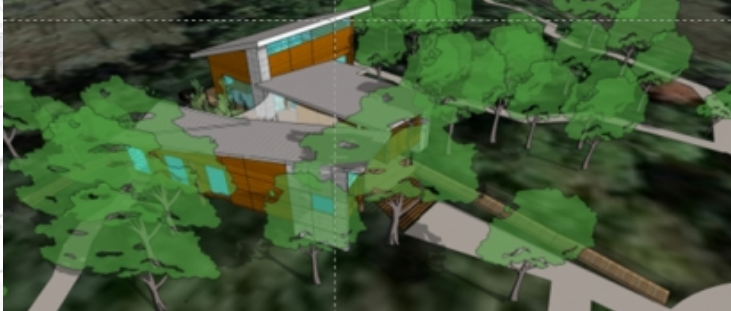
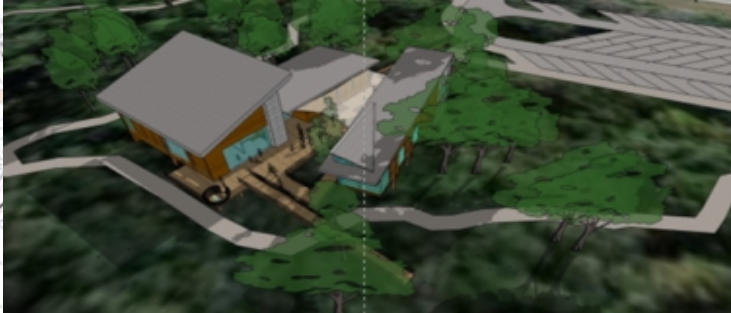
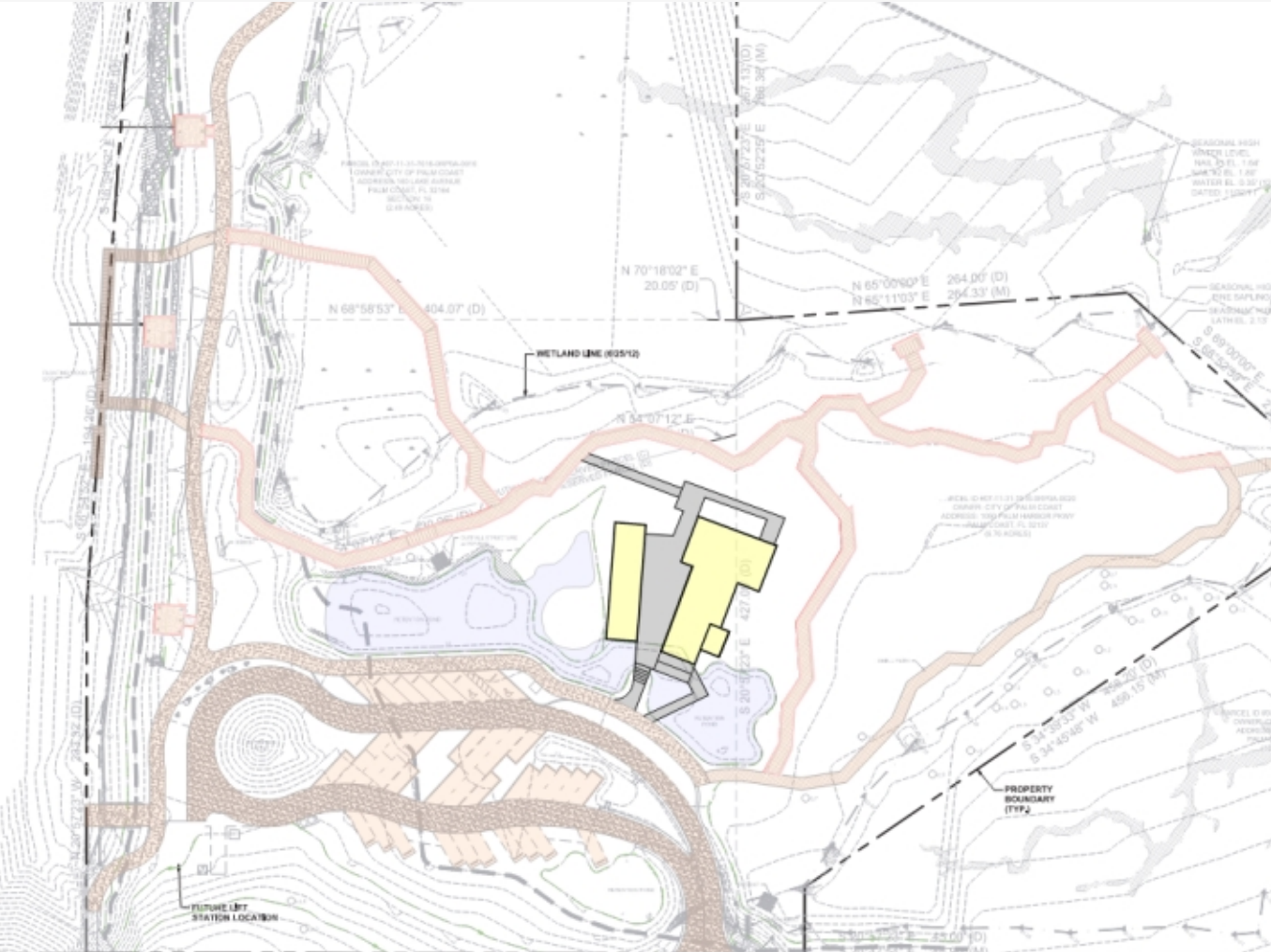
# Long Creek Nature Preserve - Phase 2

## Phase 2



# Long Creek Nature Preserve – Phase 2

## Future Phase



\*Conceptual Building Images

# Long Creek Nature Preserve – Phase 2

## Design and Construction

### Design

#### ➤ CPH, Inc.

- Design completed November, 2022

### Construction

#### ➤ ITB-SWE-23-157 Long Creek Nature Preserve – Phase 2

- Posted on August 16, 2023
- Bid Closed September 21, 2023
- 2 Bids received



# Long Creek Nature Preserve – Phase 2

## Project Funding

### Design

- Recreation Impact Funds - FY 2021 / 2022

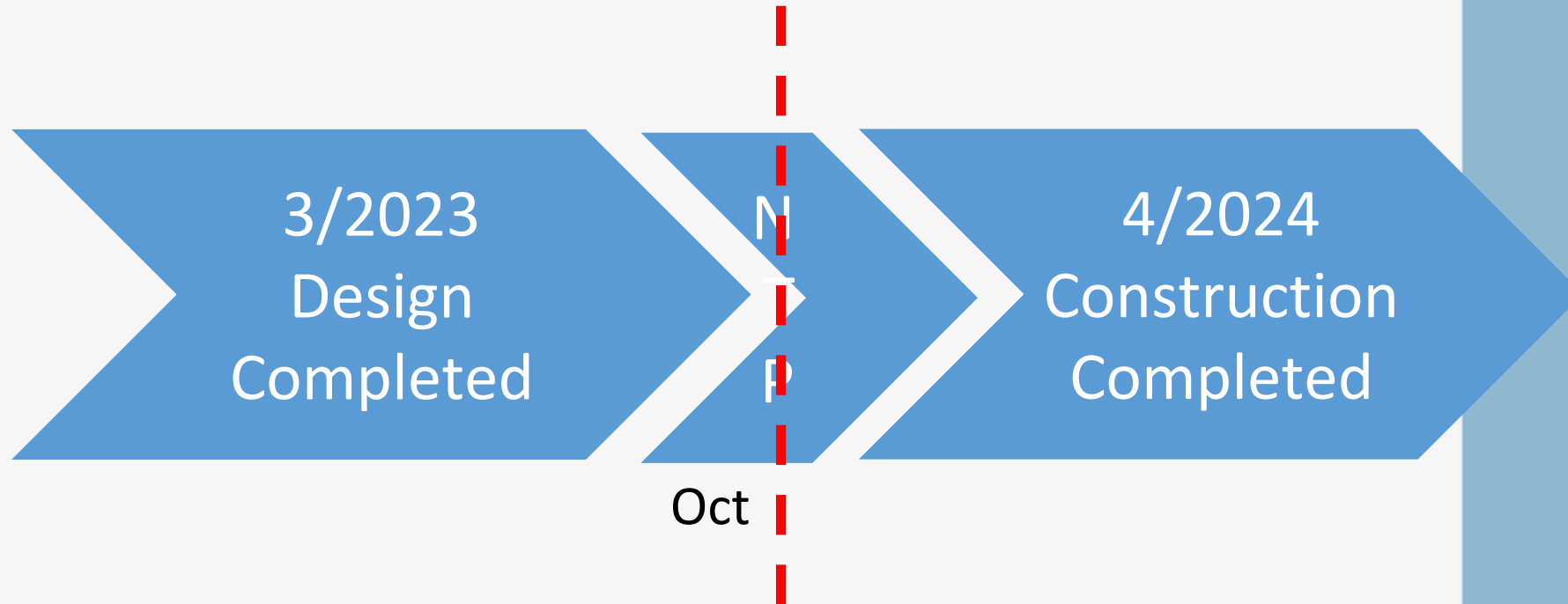
### Construction

- Recreation Impact Funds - FY 2024 / 2025
- \$1,330,000
- \$325,000
  - Florida Department of Environmental Protection  
Recreational Trails Program Grant





# Long Creek Nature Preserve – Phase 2 Timeline



# Long Creek Nature Preserve – Phase 2

## Council Actions

### Approval of Construction Contract

- Saboungi Construction, Inc.
- \$1,031,100.00
  - Construction Cost
- \$150,000.00
  - CEI Services
  - Contingency
- \$32,490.00
  - Grant Management Services - Pegasus



# Questions?



**RESOLUTION 2023 - \_\_\_\_**  
**LONG CREEK NATURE PRESERVE PHASE II**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A CONTRACT WITH SABOUNGI CONSTRUCTION INC., A WORK ORDER WITH PEGAUS ENGINEERING, LLC., AND A PROJECT CONTINGENCY FOR THE LONG CREEK NATURE PRESERVE PHASE II PROJECT: PROVIDING AUTHORIZATION TO EXECUTE; PROVIDING FOR FUTURE AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Saboungi Construction, Inc., desires to construct the Long Creek Nature Preserve Phase II project; and

**WHEREAS**, Pegasus Engineering, LLC, desires to provide grant compliance services for the Long Creek Nature Preserve Phase II project; and

**WHEREAS**, the City Council of the City of Palm Coast desires to approve the above-mentioned services for 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. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. APPROVAL OF CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a contract with Saboungi Construction, Inc., a work order with Pegasus Engineering, LLC, and a project contingency for the Long Creek Nature Preserve Phase II project as attached hereto and incorporated herein by references as Exhibit “A.”

**SECTION 3. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**SECTION 4. FUTURE AMENDMENTS.** The City Manager, or designee is hereby authorized to approve any future amendments to the Master Services Agreement in

accordance with the limits as set forth in Chapter 2, Division 3 Purchases and Contractual Services relating to the purchase approved by this Resolution.

**SECTION 5. 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 6. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 7. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 8. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_

\_\_\_\_\_  
KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_

NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A- Draft Contract - Saboungi Construction, Inc.  
Pegasus Proposal



## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between SABOUNGI CONSTRUCTION, INC., duly authorized to conduct business in the State of Florida, whose address is 290A North US Highway 1, Ormond Beach, Florida 32174, hereinafter called the "CONTRACTOR", and THE CITY OF PALM COAST, a political subdivision of the State of Florida, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, hereinafter called the "CITY". CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### WITNESSETH:

**Section 1. Work.** CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction work to existing Long Creek Nature Preserve - work will include the construction of new shell paths, wooden boardwalks, overlooks, and gazebos.

The Project for which the Work under the Contract Documents is a part is identified as:

### **LONG CREEK NATURE PRESERVE – PHASE 2, ITB-SWE-23-57**

#### **Section 2. Engineer.**

(a) ENGINEER OF RECORD as named in the Contract Documents shall mean CPH Inc.

(b) Construction Engineering "CE" (post design services) is the CITY's Engineer or the CITY's contracted consultant for construction engineering services. According to the Contract Documents, "CE" shall mean City of Palm Coast.

#### **Section 3. Contract Time.**

(a) All provisions regarding Contract Time are essential to the performance of this Contract.

(b) The Work shall be substantially completed as described in subsection 14.13 of the General Conditions, within ninety (90) calendar days beginning on the date of commencement as provided in subsection 2.2 of the General Conditions. The Work shall be finally completed, ready for Final Payment in accordance with subsection 14.9 of the General Conditions, within thirty (30) calendar days after the actual date of Substantial Completion.

(c) The parties acknowledge that the Contract Time provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms.

(d) Float time is allocated specifically to the CONTRACTOR's responsibility for coordination of utility relocations by subsection 12.1.1.1.3 of the General Conditions is included in the Contract Time provided by this Section. The CITY will not consider any Contract Time extensions related to utility coordination matters including, but not limited to, utility relocations and conflicts, unless the utility relocation delays exceed the float time allowed by subsection 12.1.1.1.3 and also extend the Project Schedule's Critical Path.

(e) In the event that the Work requires phased construction, then multiple points of Substantial Completion may be established in the Supplementary Conditions.

#### **Section 4. Contract Price.**

(a) CITY shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents on the basis of the Total Bid (original Contract Price). The CONTRACTOR's total compensation is **ONE MILLION, THIRTY-ONE THOUSAND, ONE-HUNDRED DOLLARS (\$1,031,100.00)** subject only to increases or decreases made in strict conformance with the Contract Documents.

(b) CONTRACTOR agrees to accept the Contract Price as full compensation for doing all Work, furnishing all Materials, and performing all Work embraced in the Contract Documents; for all loss or damage arising out of performance of the Work and from the action of the elements or from any unforeseen or unknown difficulties or obstructions which may arise or be encountered in the prosecution of the Work until the Final Acceptance; and for all risks of every description connected with the Work.

(c) The CONTRACTOR acknowledges that CONTRACTOR studied, considered, and included in CONTRACTOR's Total Bid (original Contract Price) all costs of any nature relating to: (1) performance of the Work under Central Florida weather conditions; (2) applicable law, licensing, and permitting requirements; (3) the Project site conditions, including but not limited to, subsurface site conditions; (4) the terms and conditions of the Contract Documents, including, but not limited to, the indemnification, direct purchase of materials and no damage for delay provisions of the Contract Documents.

(d) The CONTRACTOR acknowledges that performance of the Work will involve significant Work adjacent to, above, and in close proximity to Underground Facilities including utilities which will require the support of active utilities, as well as, the scheduling and sequencing of utility installations, and relocations (temporary and permanent) by CONTRACTOR.

(1) In addition to the acknowledgments previously made, the CONTRACTOR acknowledges that the CONTRACTOR's Total Bid (original Contract Price) specifically considered and relied upon CONTRACTOR's own study of Underground Facilities, utilities in their present, relocated (temporary and permanent) and proposed locations, and conflicts relating to utilities and Underground Facilities.

(2) The CONTRACTOR acknowledges that CONTRACTOR's Total Bid (original Contract Price) considered and included all of CONTRACTOR's costs relating to CONTRACTOR's responsibilities to coordinate and sequence the Work of the CONTRACTOR with the Work of the CITY with its own forces, the work of other utility contractors and the work of others at the Project site.

#### **Section 5. Payment Procedures.**

(a) CONTRACTOR shall submit Applications for Payment in accordance with Section 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions. In the event an ENGINEER is not being utilized, Applications for Payment shall be forwarded to the CITY's Finance Accounts Payable Department.

(b) Progress Payments. CITY shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, in accordance with Section 14 of the General Conditions.

(c) Final Payment. Upon Final Completion and acceptance of the Work in accordance with subsection 14.9.1 of the General Conditions, CITY shall pay the remainder of the Contract Price as provided in subsection 14.9.1

#### **Section 6. Retainage and Withholding Payment for Breach**

(a) Retainage under the Contract Documents is held as collateral security to secure completion of the Work.

(b) CITY may withhold payment equal to the product of the number of Days after Substantial Completion and the amount of liquidated damages set forth in Section 9 of this Contract for CONTRACTOR's material breach of contract where CONTRACTOR is behind schedule for Substantial Completion, and it is anticipated by CITY that the Work will not be completed within the Contract Time for Substantial Completion. The City may, at the CITY'S discretion, withhold the liquidated damage amount from subsequent Progress Payments. Any withheld payments held under this subsection shall be released to CONTRACTOR in the next Progress Payment following the ENGINEER's approval of a supplemental Progress Schedule demonstrating that the requisite progress will be regained and maintained as required by subsection 6.19.2 of the General Conditions.

**Section 7. Contractor's Representations.** In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

(a) CONTRACTOR has familiarized themselves with the nature and extent of the Contract Documents, Work, locality, weather, Purchasing and Contracts Procedures, and with all local conditions and federal, state, and local laws, utility locations, ordinances, rules, policies, and regulations that in any manner may affect cost, progress, or performance of the Work.



(b) CONTRACTOR has studied carefully and considered in its Bid all reports of investigations and tests of subsurface and physical conditions of the site affecting cost, progress, scheduling, or performance of the Work.

(c) CONTRACTOR has studied carefully and considered in its Bid the Plans and Specifications, performed necessary observations, examinations, and studied the physical conditions at the site related to Underground Facilities, utility installations, conflicts, re-locations (temporary and permanent) and all other Underground Facilities and utility related conditions of the Work and site that may affect cost, progress, scheduling, or any aspect of performance of the Work and that its Bid reflects all such conditions. CONTRACTOR, by submitting its Bid and executing this Contract acknowledges the constructability of the Work under the Plans and Specifications. CONTRACTOR by its study, excludes and releases the CITY from any implied warranties including but not limited to, those arising under the "Spearin Doctrine", that the Plans and Specifications are adequate to perform the Work.

(d) CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by CONTRACTOR for such purposes.

(e) CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

(f) CONTRACTOR has given ENGINEER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

(g) The CONTRACTOR declares and agrees that the approval or acceptance of any part of the Work or Material by the CITY, ENGINEER or any agent relating to compliance with the Contract Documents shall not operate as a waiver by the CITY of strict compliance with the terms and conditions of the Contract Documents.

(h) The CONTRACTOR declares and agrees that the CITY may require them to repair, replace, restore, or make all things comply with the Contract Documents including all Work or Materials which within a period of two (2) years from Acceptance by CITY are found to be Defective or fail in any way to comply with the Contract Documents. The CONTRACTOR acknowledges that the above two (2) years repair, replace and restoration period is separate from and additional to CONTRACTOR's warranty that the Work has been completed in compliance with the Contract Documents. The two (2) years repair, replace and restoration period is not a limitation upon CONTRACTOR's other warranties, Right-of-Way Permit Bond and/or Material and Workmanship Bond.

(i) The CONTRACTOR's resident Superintendent at the Work site shall be: \_\_\_\_\_ and this Superintendent only shall be utilized by the CONTRACTOR unless otherwise approved by the CITY Project Manager and following the procedure indicated in the General Conditions.

(j) CONTRACTOR has studied carefully and considered all permit requirements related to performance of the Work. CONTRACTOR declares and agrees that all costs related to performing the Work in compliance with the requirements of all permits at the Contract Price are included in the Contract Price. CONTRACTOR agrees that CONTRACTOR shall be solely responsible for payment of all fines and penalties of any nature assessed to the CONTRACTOR or CITY or both by any governmental entity, district, authority, or other jurisdictional entity relating to all permits required for performance of the Work.

(k) CONTRACTOR acknowledges that the performance of the Work under the Contract Documents fulfills a CITY, CONTRACTOR, and public purpose. To that end, CONTRACTOR agrees to respond to citizen complaints related to alleged damage caused by CONTRACTOR's performance of the Work within two (2) days of receipt of the complaint from citizens, ENGINEER, or the CITY. The CONTRACTOR shall utilize the "Report of Unsatisfactory Materials and/or Service" form to respond separately to each complaint. When a complaint is brought to the CONTRACTOR by a citizen, the CONTRACTOR shall identify the citizen and street address in the "Statement of Problem". Responses and action taken by the CONTRACTOR shall specifically identify the problem specific actions taken. Generic statements such as "addressed the problem" are unacceptable. If the CONTRACTOR fails to respond within two (2) days, then the CITY may take corrective action and deduct the actual costs of corrective action from subsequent Progress Payments or the retainage.

(l) CONTRACTOR acknowledges that the CITY owned property obtained for performance of the Work within the project limits includes temporary construction easements. In the event that the CONTRACTOR fails to perform the Work within the Contract Time, then CONTRACTOR shall be solely responsible for payment of all costs for additional or extended temporary construction easements. The CONTRACTOR authorizes the CITY to deduct the actual costs of additional or extended temporary construction easements from subsequent Progress Payments or the retainage.

**Section 8. Contract Documents.** The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR are made a part hereof and consist of the following:

- (a) This Contract.
- (b) Addenda.
- (c) Bid.
- (d) American With Disabilities Act Affidavit.
- (e) Performance Bond.
- (f) Payment Bond.
- (g) Material and Workmanship Bond and/or Right-of-Way Permit Bond
- (h) Specifications.
- (i) Technical Specifications Provided in these Contract Documents

- (j) General Conditions.
- (k) Supplementary Conditions including any utility specific forms provided by the CITY's Utility Division.
- (l) Notice To Proceed.
- (m) Change Orders.
- (n) Certificate of Substantial Completion.
- (o) Certificate of Final Inspection and Completion
- (p) Certificate of Engineer.
- (q) CONTRACTOR's Release.
- (r) Drawings and Plans.
- (s) Supplemental Agreements.
- (t) CONTRACTOR's Waiver of Lien (Partial)
- (u) CONTRACTOR's Waiver of Lien (Final and Complete)
- (v) Subcontractor/Vendor's Waiver of Lien (Final and Complete)
- (w) Consent of Surety to Final Payment
- (x) Instructions to Bidders
- (y) CONTRACTOR's Insurance Requirements, Certificate, and Insurance Policies

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be altered, amended, or repealed by a modification as provided in the General Conditions.

### **Section 9. Liquidated Damages.**

(a) The CITY and CONTRACTOR recognize that time is essential to the performance of this Contract and CONTRACTOR recognizes that the CITY and its traveling public will suffer financial loss if the Work is not substantially completed as described in subsection 14.13 of the General Conditions within the time specified below, plus any extensions thereof allowed in accordance with Section 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or alternative dispute resolution proceeding the damages resulting from inconvenience to the traveling public including traffic loading, intersection operations, costs for time, costs of fuel and costs for some environmental impacts (excluding actual delay damages which may include, but are not limited to, engineering fees and inspection costs) suffered by the CITY if the Work is not completed on time. Accordingly, CONTRACTOR and CONTRACTOR's Surety agree to pay CITY as liquidated damages, and not as a penalty, **ONE THOUSAND and No/100 DOLLARS (\$1000.00)** per Day for each Day CONTRACTOR exceeds the Contract Time for Substantial Completion until the Work is

Substantially Complete. It is agreed that if this Work is not Finally Completed in accordance with the Contract Documents, the CONTRACTOR shall pay the CITY as liquidated damages for delay, and not as a penalty, one-fourth (1/4) of the rate set forth above.

(b) The CONTRACTOR shall pay or reimburse, in addition to the liquidated damages specified herein, the CITY's actual damages which may include but are not limited to expenses for engineering fees and inspection costs arising from CONTRACTOR's failure in meeting either or both the Substantial Completion and Final Completion dates.

(c) The liquidated damages provided in this Section are intended to apply even if CONTRACTOR is terminated, in default, or if the CONTRACTOR has abandoned the Work.

#### **Section 10. Miscellaneous.**

(a) Terms used in this Contract which are defined in Section 1 of the General Conditions shall have the meanings indicated in the General Conditions.

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

(c) CITY and CONTRACTOR each binds themselves, their partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

**Section 11. Contractor's Specific Consideration.** In consideration of the CONTRACTOR's indemnity agreements as set out in the Contract Documents, CITY specifically agrees to pay the CONTRACTOR the sum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) or ONE PERCENT (1%) OF THE CONTRACT SUM WHICHEVER IS GREATER. The CONTRACTOR acknowledges receipt of the specific consideration for CONTRACTOR's indemnification of CITY and that the specific consideration is included in the original Contract Price allocated by CONTRACTOR among all pay items - receipt of which is acknowledged.

**Section 12. Notices.** Whenever either party desires to give notice unto the other including, but not limited to, Contract Claims, it must be given by written notice, hand delivered, signed and dated for receipt or sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**TO CONTRACTOR:**

Hassan Saboungi  
Saboungi Construction, Inc.  
290A North US Hwy 1  
Ormond Beach, Florida 32174

**TO CITY:**

City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**Section 13. Conflict of Interest.**

(a) The CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the CITY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government and the CITY's Personnel Policies.

(b) The CONTRACTOR hereby certifies that no officer, agent, or employee of the CITY has any material interest (as defined in Section 112.312 (15), Florida Statutes, as over five percent (5%) either directly or indirectly, in the business of the CONTRACTOR to be conducted here, and that no such person shall have any such interest at any time during the term of this Contract.

(c) Pursuant to Section 216.347, Florida Statutes, the CONTRACTOR hereby agrees that monies received from the CITY pursuant to this Contract will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

**Section 14. Material Breaches of Contract.**

(a) The parties recognize that breaches of the Contract Documents may occur and that remedies for those breaches may be pursued under the Contract Documents. The parties further recognize that the safety of the traveling public is of paramount concern. Therefore, the parties agree that any breach of the Contract Documents related to life safety, including but not limited to, the maintenance of traffic requirements of the Contract Documents, shall be considered a material breach of the Contract Documents.

(b) Upon a material breach of the Contract Documents related to life safety, as determined by ENGINEER, the ENGINEER shall issue a stop work order suspending the Work or any specific portion of the Work until the conditions are corrected. If the life safety conditions giving rise to the stop work order are not corrected within a reasonable time, as determined by ENGINEER, then the material breach shall entitle CITY to terminate this Contract. The recognition of breaches of the provisions of the Contract Documents related to life safety as material breaches shall not be construed as a limitation on other remedies for breaches or material breaches of the Contract Documents.

## **Section 15. E-Verify Registration and Use**

Effective January 1, 2021, public and private employers, contractors, and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- (a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- (b) All persons (including subvendors/subsconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

**Section 16. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.

**Section 17. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:

- (a) The Contractor's political opinions, speech, or affiliations;
- (b) The Contractor's religious beliefs, religious exercise, or religious affiliations;

- (c) The Contractor's lawful ownership of a firearm;
- (d) The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
- (e) The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
- (f) The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
- (g) The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
- (h) The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**IN WITNESS WHEREOF**, the parties hereto have signed this Contract. All portions of the Contract Documents have been signed or identified by the CITY and the CONTRACTOR.

**CITY OF PALM COAST**

By: \_\_\_\_\_

Name: Denise Bevan

Title: City Manager

Date: \_\_\_\_\_

**SABOUNGI CONSTRUCTION, INC.**

By: \_\_\_\_\_

Authorized Signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# city of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-SWE-23-41 - City Hall Interior Modifications

**Date:** 6/29/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 7/6/2023

Firm	Bid
MEI, INC. Apopka, FL	\$304,405.00

The intent of the City of Palm Coast is to award ITB-SWE-23-41 to MEI, INC.

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [sknolan@palmcoastgov.com](mailto:sknolan@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*







August 4, 2023

Mr. Carl Cote  
Director of Stormwater & Engineering  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**Re: Long Creek Nature Preserve Trail System  
City of Palm Coast, Flagler County  
FDEP's Recreational Trails Program Grant Program  
RTP Project No. T19013**

**Sub: Grant Management Services**

Dear Mr. Cote:

Per the City's request, it is our privilege to present herein a proposal for your review and approval associated with grant management services pertaining to the Long Creek Nature Preserve Trail System project.

In January 2019, the City of Palm Coast submitted a grant application to the State of Florida Department of Environmental Protection (FDEP) for funding consideration of the expansion of the trail system serving the Long Creek Nature Preserve located at 1050 Palm Harbor Parkway, Palm Coast, Florida 32137. The trail system will consist of an 8-ft wide shell trail, 8-ft wide (3) boardwalks, three (3) boardwalk pavilions and two (2) overlooks.

Upon review of the grant application submitted by the City and following the evaluation criteria established pursuant to 62S-2, F.A.C., FDEP selected the project for funding consideration. Subsequently, FDEP issued a grant agreement for this project (RTP Project No. T19013) which will partially fund the construction of the trail system based on a State fund allocation of \$325,000. It is understood that CPH Engineers is currently finalizing the preparation of the construction plans, technical specifications, and the engineer's estimate of construction for submittal to the City in the very near future.

Pegasus' main goal is to ensure the City's full compliance with the grant agreement requirements specified for this project. Based on the current project status, it is our understanding that Pegasus Engineering's grant management related tasks are anticipated to include the following services:

1. Review the Grant Agreement issued by FDEP for specific grant requirements, as well as the schedule of milestones and deadlines.
2. Prepare for and attend a Kick-Off Meeting with City Officials and staff.
3. Coordinate with FDEP and City staff regarding the project status and the need for administrative requests (i.e., grant extension request, etc.).
4. Assist the City with the review of pertinent project documentation provided by FDEP, the design engineer (CPH Engineers), or contractors throughout the course of the project, and day-to-day assignments as they relate to the grant agreement.
5. Coordinate with City staff and design engineer (CPH Engineers) regarding the project status in anticipation of the preparation of progress reports.
6. Prepare and submit progress reports to FDEP during the course of the contract.
7. Conduct meetings with FDEP Staff through the Period of Performance end date, as necessary.
8. Assist the City with bidding services, including the reviews of the bid package, construction solicitation, public notice, etc., for compliance with grant requirements.
9. Coordinate with the City, the design engineer (CPH Engineers), and the construction contractor regarding specific grant requirements to be followed during construction in order not to jeopardize funding reimbursement by FDEP.
10. Assist the City during the Construction Phase, as necessary, to comply with grant requirements.
11. Coordinate with City staff regarding paid invoices, cancelled checks, and supporting documentation to prepare and submit a Reimbursement Request to FDEP.

12. Coordinate with the engineering consultant (CPH Engineers) regarding the required deliverables and review the documentation provided for accuracy prior to submittal to FDEP.
13. Prepare and submit a close-out documentation package to FDEP including a final status report.
14. Address FDEP's request(s) for information consequently to the submittal of the project deliverables.
15. Ensure that records are maintained and reporting completed during the entire schedule to comply with grant requirements.
16. Prepare Status Reports via Monthly Invoices (Project Administration).

The above-described services will be performed for an hourly not-to-exceed fee amount of **\$32,490**. Reimbursable expenses, such as courier, tolls, mileage, photocopies, plotting, and exhibits incurred in connection with the above-described work will be included in the above quoted fee.

We look forward to the opportunity to serve the City of Palm Coast on this important assignment to allow for the full implementation of this project. If you have any questions, please contact me directly at 407-992-9160, extension 309, or by email at [david@pegasusengineering.net](mailto:david@pegasusengineering.net).

Very truly yours,

PEGASUS ENGINEERING, LLC

David W. Hamstra, P.E., CFM

Principal / Stormwater Department Manager

cc: Eric Gebo, City of Palm Coast  
Leylah Saavedra, Pegasus Engineering

Pegasus Project File PCC-22002

**Long Creek Nature Preserve Trail System  
City of Palm Coast, Flagler County  
FDEP's Recreational Trails Program Grant Program  
RTP Project No. T19013  
Grant Management Services**

Approved for Pegasus Engineering, LLC

  
Fursan Munjed, P.E.

Principal \_\_\_\_\_  
Officer's Title

August 4, 2023 \_\_\_\_\_  
Date

This proposal is hereby accepted and authorization to proceed is hereby given  
(Please return one executed copy of this proposal for our Pegasus Engineering records).

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Officer's Title

\_\_\_\_\_  
Date

**Manhour and Fee Estimate**

**LONG CREEK NATURE PRESERVE TRAIL SYSTEM  
FDEP'S RECREATIONAL TRAILS PROGRAM GRANT PROGRAM  
RTP PROJECT No.T19013  
Grant Management Services**



Task Description	Sr. Project Manager (Hamstra, P.E.)	Sr. Project Engineer / Sr. Grant Manager (Saavedra, P.E.)	Administrative Assistant (Villanueva)	Task Hours	Task Fees
<b>Standard Hourly Rates</b>	<b>\$195.00</b>	<b>\$185.00</b>	<b>\$85.00</b>		
1. Review the Grant Agreement issued by FDEP for specific grant requirements, schedule of milestones, and deadlines		2		2	\$370.00
2. Prepare for and attend a Kick-Off Meeting with City Officials	4	4		8	\$1,520.00
3. Coordinate with FDEP and City staff regarding the project status and the need for administrative requests		4		4	\$740.00
4. Assist the City with the review of pertinent project documentation provided by FDEP, the design engineer, or contractors throughout the course of the project		24	2	26	\$4,610.00
5. coordinate with City staff and design engineer (CPH Engineers) regarding the project status in anticipation of the preparation of progress reports		8		8	\$1,480.00
6. Prepare and submit progress reports to FDEP during the course of the contract		24		24	\$4,440.00
7. Conduct meetings with FDEP Staff through the Period of Performance end date, as necessary		4		4	\$740.00
8. Assist the City with bidding services, including the reviews of the bid package, construction solicitation, public notice, etc., for compliance with grant requirements		12	2	14	\$2,390.00
9. Coordinate with the City, the design engineer (CPH Engineers), and the construction contractor regarding specific grant requirements		4		4	\$740.00
10. Coordinate with City staff regarding paid invoices, cancelled checks and supporting documentation in order to prepare and submit Reimbursement Requests to FDEP		4	6	10	\$1,250.00
11. Assist the City during the Construction Phase, as necessary, to comply with grant requirements	4	20		24	\$4,480.00
12. Coordinate with the engineering consultant regarding the required deliverables and review the documentation provided for accuracy prior to submittal to FDEP		8		8	\$1,480.00
13. Prepare and submit a close-out documentation package to FDEP including a final status report		16	4	20	\$3,300.00
14. Address FDEP's request(s) for information consequently to the submittal of the project deliverables		4	4	8	\$1,080.00
15. Ensure that records are maintained and reporting completed during the entire schedule to comply with grant requirements		4		4	\$740.00
16. Prepare Status Reports via Monthly Invoices (Project Administration and Peer Review Work Products)	10		8	18	\$2,630.00
TASK HOURS	18	142	26	186	
TASK LABOR COSTS	\$3,510.00	\$26,270.00	\$2,210.00	\$31,990.00	\$31,990.00
PERCENT BREAKDOWN	11.0%	82.1%	6.9%	100.0%	
<b>Fee Computations</b>					
				(1) Pegasus Engineering Labor Costs	\$31,990.00
				(2) Reimbursable Expenses	\$500.00
				<b>TOTAL HOURLY NTE FEES</b>	<b>\$32,490.00</b>





# ITB-SWE-23-41 - CITY HALL INTERIOR MODIFICATIONS

## Project Overview

Project Details	
Reference ID	ITB-SWE-23-41
Project Name	CITY HALL INTERIOR MODIFICATIONS
Project Owner	Shannon Nolan
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	The City of Palm Coast is requesting proposals from Florida State Licensed General Contractors for construction work at the existing City Hall Building's Human Resources, Administration, and Council Chamber located at 160 Lake Avenue, Palm Coast, Florida.
Open Date	May 10, 2023 8:00 AM EDT
Intent to Bid Due	Jun 07, 2023 2:00 PM EDT
Close Date	Jun 08, 2023 2:00 PM EDT

Highest Scoring Supplier	Score
MIE, INC	100 pts

## Seal status



Requested Information	Unsealed on	Unsealed by
Section 00100, Forms A-M (Except Form C), and Bidder Profile Sheet	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Section 00200, Forms A-F, and Bidder Bid Form	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Addendum	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Construction Forms 5 & 6	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Bid Form A Bid Schedule	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Section 00100, Form C Financial Statements	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
Bid Security	Jun 08, 2023 2:03 PM EDT	Shannon Nolan
License - General Contractor	Jun 08, 2023 2:03 PM EDT	Shannon Nolan

## 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?
Carl Cote	Jun 28, 2023 11:29 AM EDT	No
Ginger Norberg	Jun 14, 2023 3:55 PM EDT	No
Shannon Nolan	Jun 08, 2023 2:04 PM EDT	No
Eric Gebo	Jun 08, 2023 2:12 PM EDT	No
mark tran	Jun 13, 2023 2:20 PM EDT	No





## Project Criteria

Criteria	Points	Description
Administrative Review	Pass/Fail	All documents completed and submitted as requested.
Technical Review Qualification 00100	Pass/Fail	Review Qualification Forms A-M and References
Technical Review Qualification 00200	Pass/Fail	Review Bid Forms 00200 A-F
Technical Review Construction Forms	Pass/Fail	Review Forms 5 & 6
Admin Review Addenda	Pass/Fail	Ensure Addenda (If Issued) are returned signed/dated
Admin Financial Review	Pass/Fail	Review Form C
Bid Schedule	100 pts	Bid Schedule Price
<b>Total</b>	<b>100 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Administrative Review</b>	<b>Technical Review Qualification 00100</b>	<b>Technical Review Qualification 00200</b>	<b>Technical Review Construction Forms</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>
MIE, INC	100 pts	Pass	Pass	Pass	Pass

	<b>Admin Review Addenda</b>	<b>Admin Financial Review</b>	<b>Bid Schedule</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
MIE, INC	Pass	Pass	100 pts (\$304,405.00)

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>	\$322,099.00
<b>Division</b>	ENGINEERING	<b>Account #</b>	54205509- 031000/65052525- 051020
<b>Subject:</b> RESOLUTION 2023-XX APPROVING A WORK ORDER WITH DRMP, INC., FOR ENGINEERING SERVICES FOR REAL-TIME FLOOD FORECASTING AND A THREE-YEAR TERM MAINTENANCE AND DEPLOYMENT AGREEMENT			
<b>Presenter:</b> Carmelo Morales, Stormwater Engineer III			
<b>Attachments:</b>			
<ul style="list-style-type: none"> <li>1. Presentation</li> <li>2. Resolution</li> <li>3. Proposal</li> </ul>			
<b>Background:</b>			
<b>Council Priority:</b>			
<b>B. Safe and Reliable Services</b>			
<p>DRMP, Inc., in collaboration with Streamline Technologies, Inc., LT has been asked to provide stormwater engineering services to improve the City of Palm Coast’s stormwater model. The services will be comprised of upgrading our current model/system with a real-time flood forecasting system (RTFF) that automatically retrieves near real-time and forecasted rainfall and evapotranspiration data produced by the National Water Model (NWM). Additionally, the system shall provide flood predictions 4 to 5 days into the future with 1-hour increment updates. Results will be uploaded to a dashboard that can be accessed through a web browser from any device that has internet access (e.g., smartphone, tablet, laptop, desktop).</p> <p>In summary, the proposed work shall integrate the city’s existing ICPR model with data from the National Oceanic and Atmospheric Administration (NOAA) and the city’s operable structures so as to produce the flood forecasting system. The improved model/system can be used by all of the City’s departments for data-driven emergency preparedness such as earlier evacuation warnings and staging of resources.</p> <p>Under the existing contract (RFSQ-SW-18-10), staff negotiated a scope and fee not-to-exceed \$247,099 with DRMP, Inc., City staff has determined that the cost of services are reasonable and fair and are consistent with these types of services for a project of this size and scope.</p> <p>Staff is also requesting the approval of a three-year term in the amount of \$75,000 for deployment and maintenance of the RTFF System. This fee includes all license fees associated with the RTFF system, computational cost, and normal operating and</p>			

maintenance associated with the operating system and hardware updates. This term will be billed in three (3) separate increments of \$25,000 per fiscal year, beginning with the FY 2024 budget and ending with FY 2026 budget..

Funds for these services are budgeted out of the FY 2024 Stormwater and Engineering account.

**SOURCE OF FUNDS WORKSHEET FY 24**

<b>Stormwater Engineering 54205509-031000</b>	<b>\$450,000.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$128,613.00
Current (WO/Contract)	<u>\$272,099.00</u>
<b>Balance</b>	<b>\$49,288.00</b>

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING A WORK ORDER WITH DRMP, INC., FOR ENGINEERING SERVICES FOR REAL-TIME FLOOD FORECASTING AND A THREE-YEAR TERM MAINTENANCE AND DEPLOYMENT AGREEMENT**

# A Real-Time Flood Forecasting (RTFF) System for the City of Palm Coast



Pete Singhofen, PE



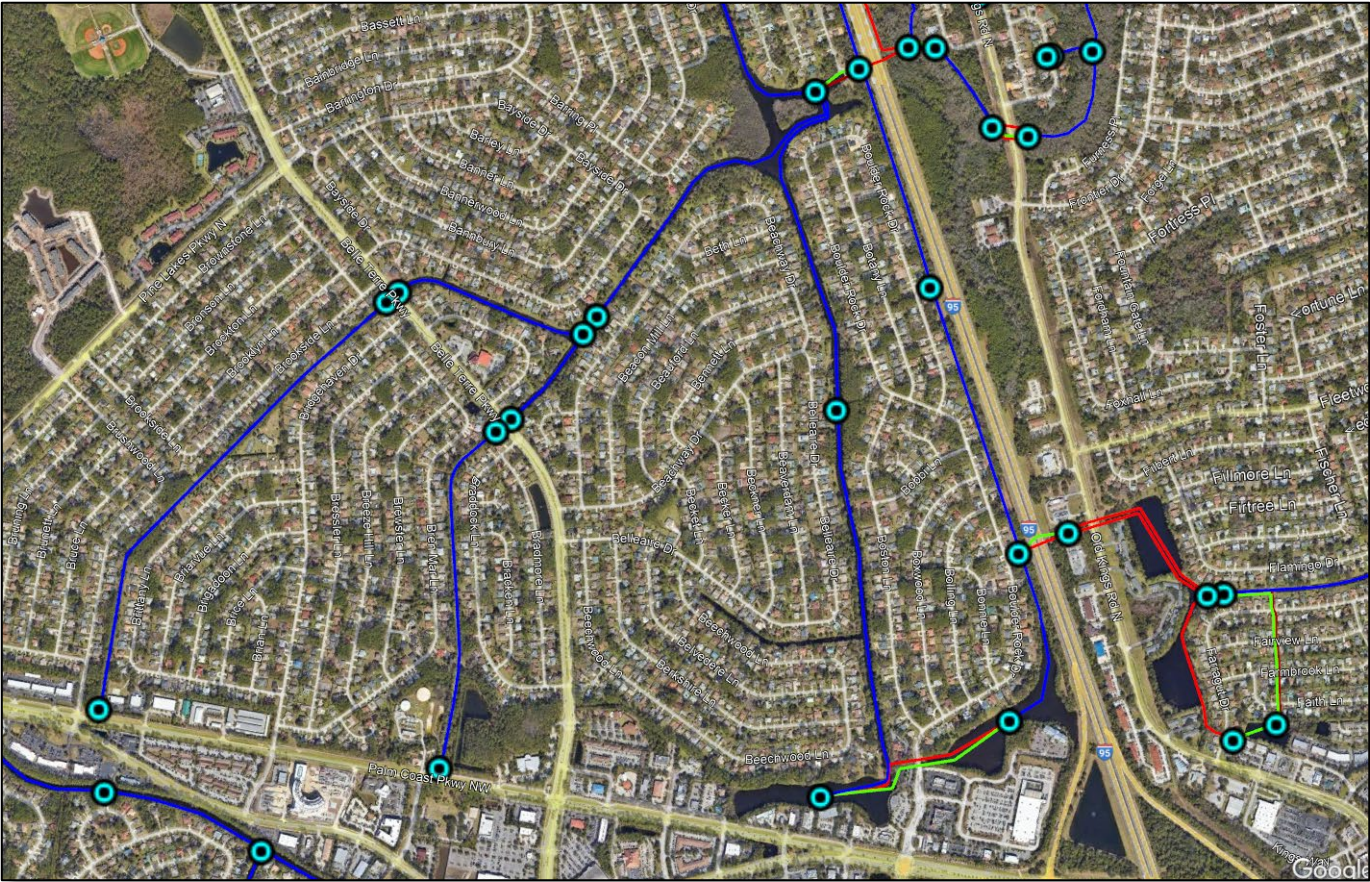
# A Real-Time Flood Forecasting System for the City of Palm Coast

## “RTFF”

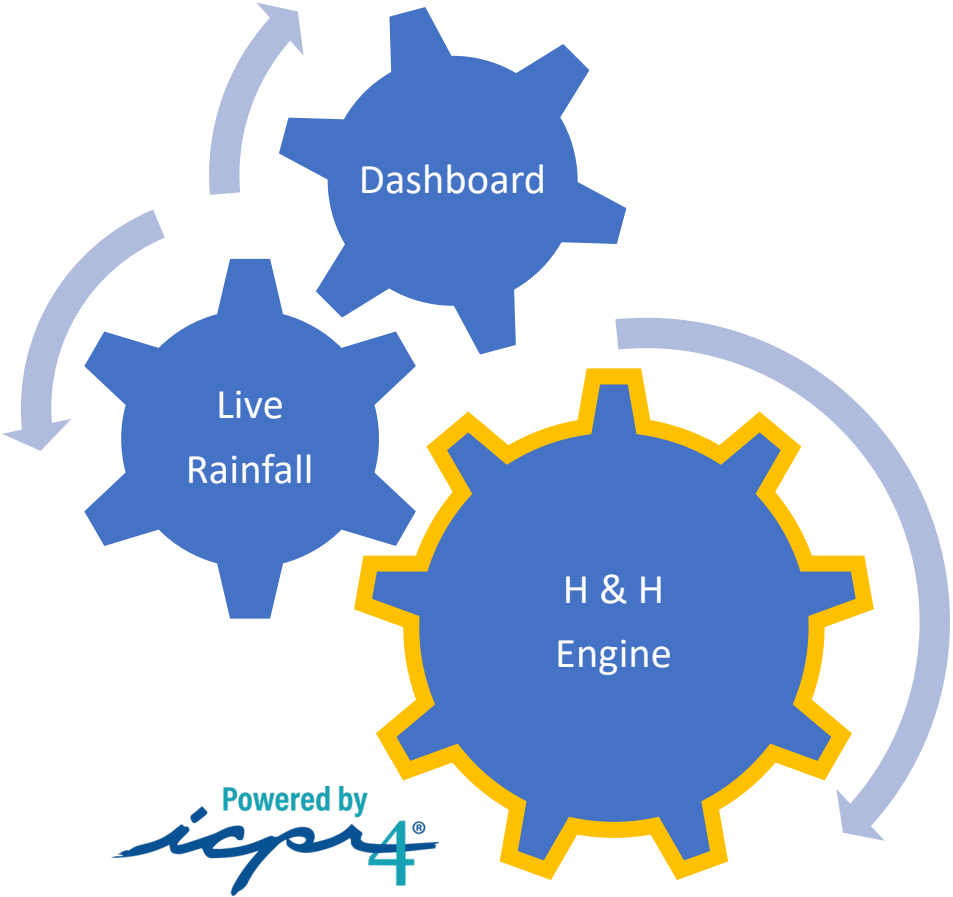
- **Real-Time**
  - ✓ What’s happening right now?
- **Flood Forecasting**
  - ✓ What is likely to happen in the next few days?



# RTFF Components



Partial ICPR4 Model, Palm Coast  
RTFF runs 24/7

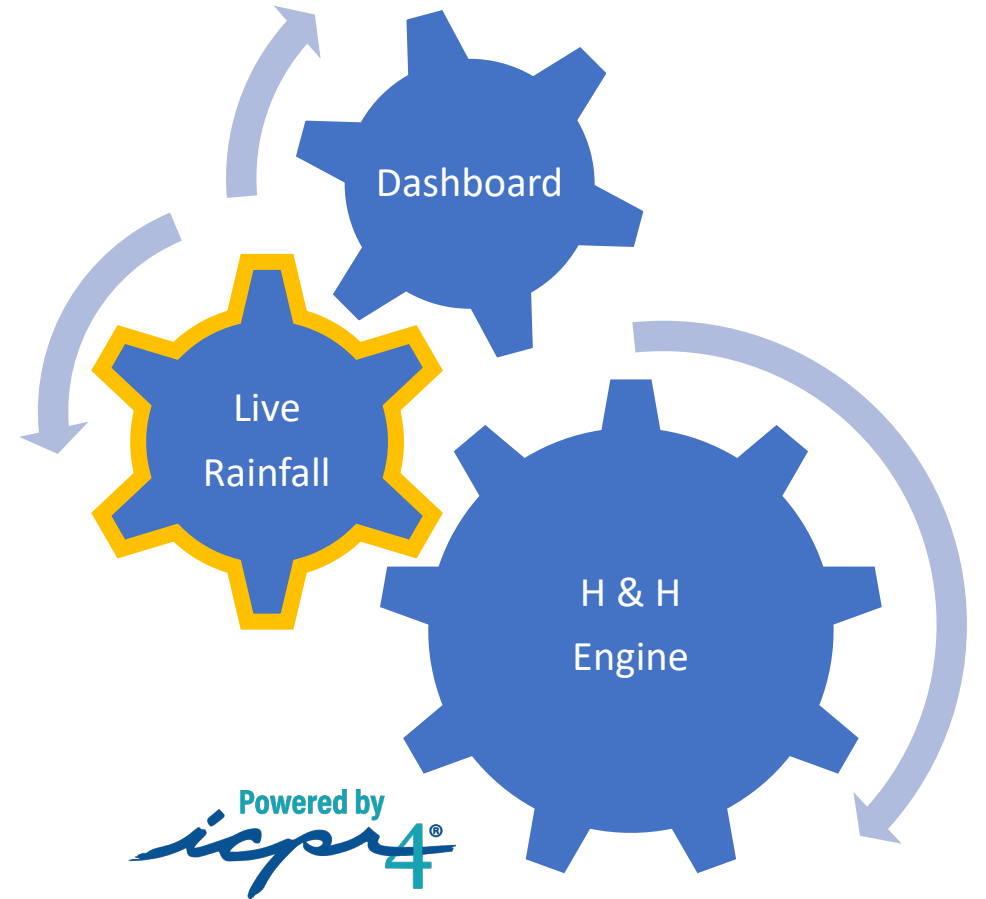
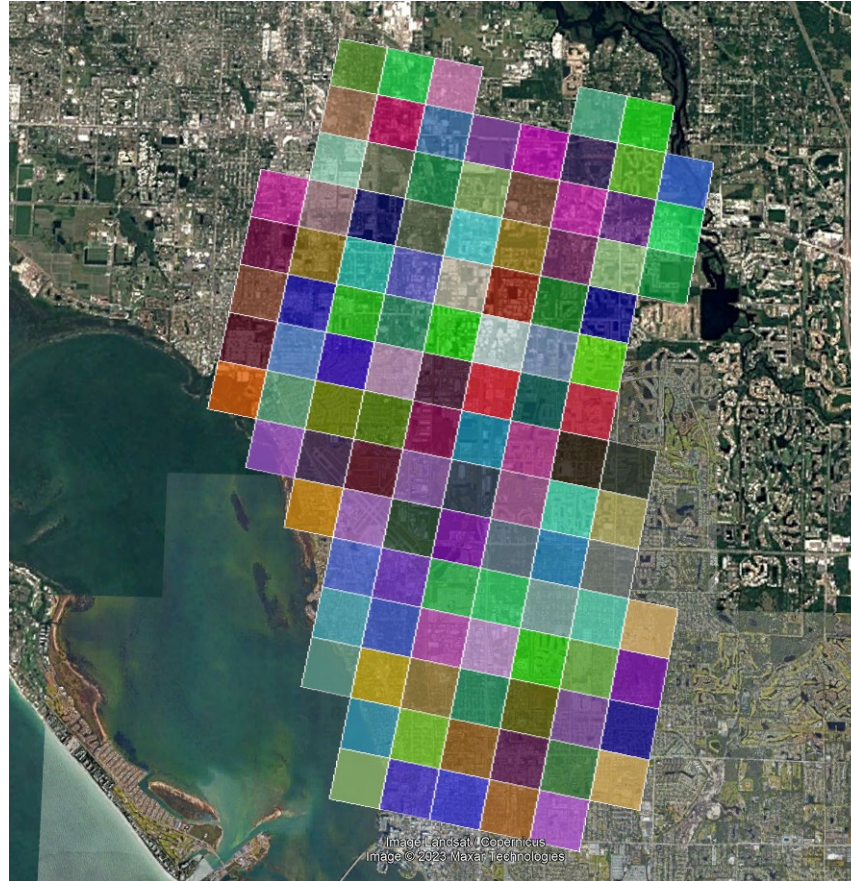


# RTFF Components

Typical

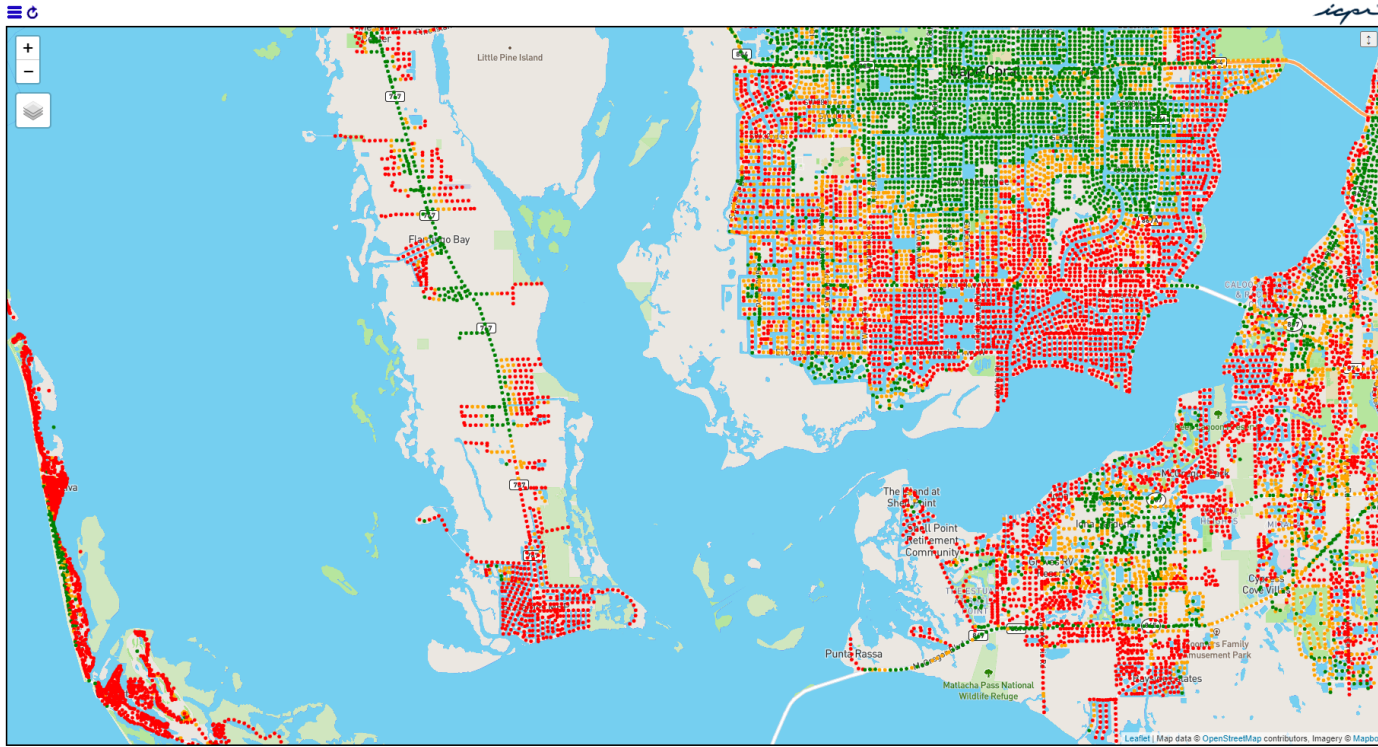
1-km Rainfall Grid

- ✓ Current conditions updated every hour
- ✓ Forecast up to 1 week into the future once per day



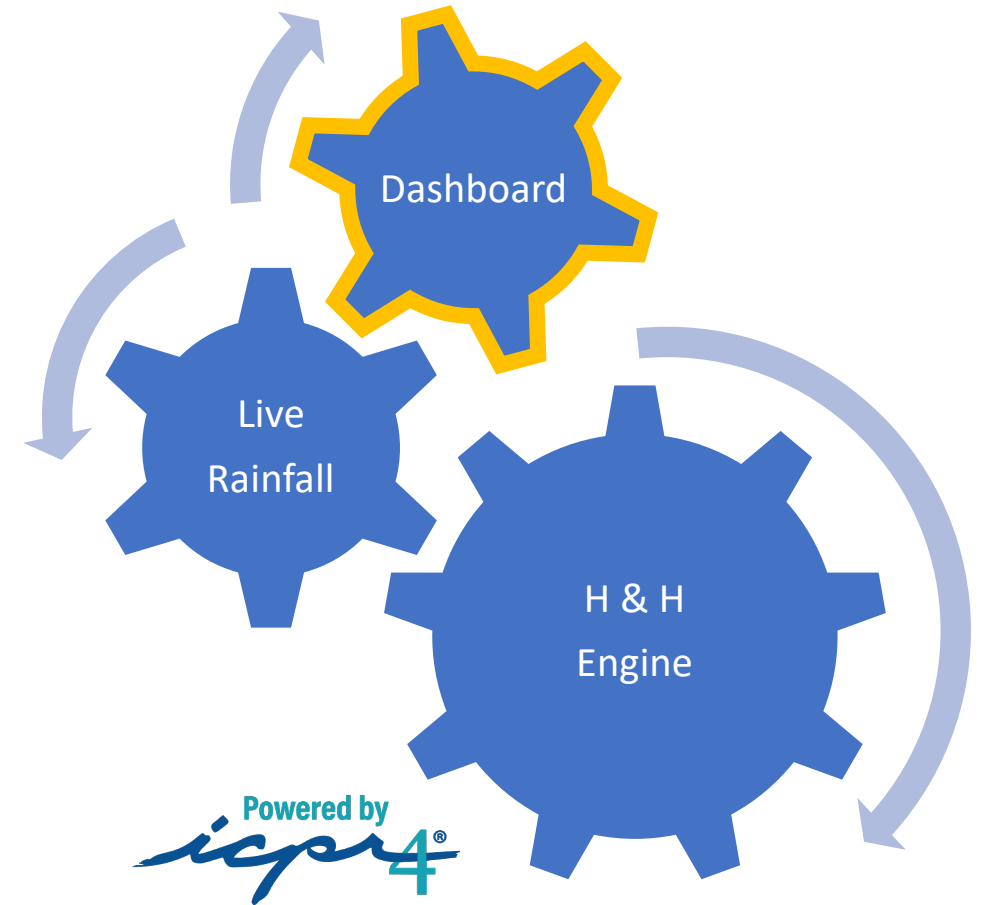


# RTFF Components



**Green – No or Minimal Flooding**   **Orange – Flood Warning**   **Red – Flood Alert**

- ✓ No need to be expert modeler – interact through dashboard
- ✓ Automatic text message alerts
- ✓ Easily & quickly conduct “what if” scenarios from dashboard
- ✓ Informed proactive decision making



What if we could know 1 to 3 days in advance precisely where flooding will occur and how long it will last?



# Orlo Vista Neighborhood – Orange County (72-Hour Advanced Warning)



## Rouse Road / Buck Road Intersection – Little Econ River (Predicted 42 Hours in Advance)



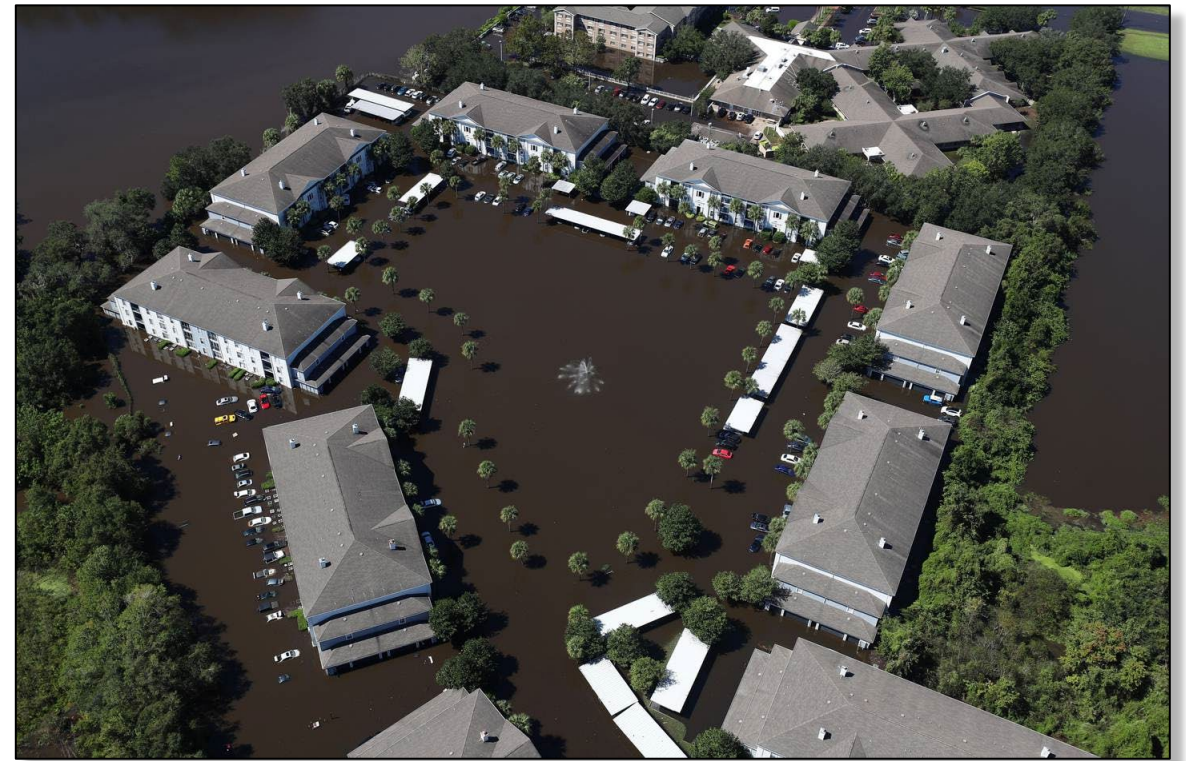
- ❑ Major connector road washed out
- ❑ Ingress/egress for 96 homes blocked for about 2 days
- ❑ Master wastewater pump station flooded (\$4M in damage, 1-yr to replace parts – could have been avoided)

# Apartment Complexes, Central Florida (Predicted 42 Hours in Advance)

## The Place at Alafaya



## Arden Villas

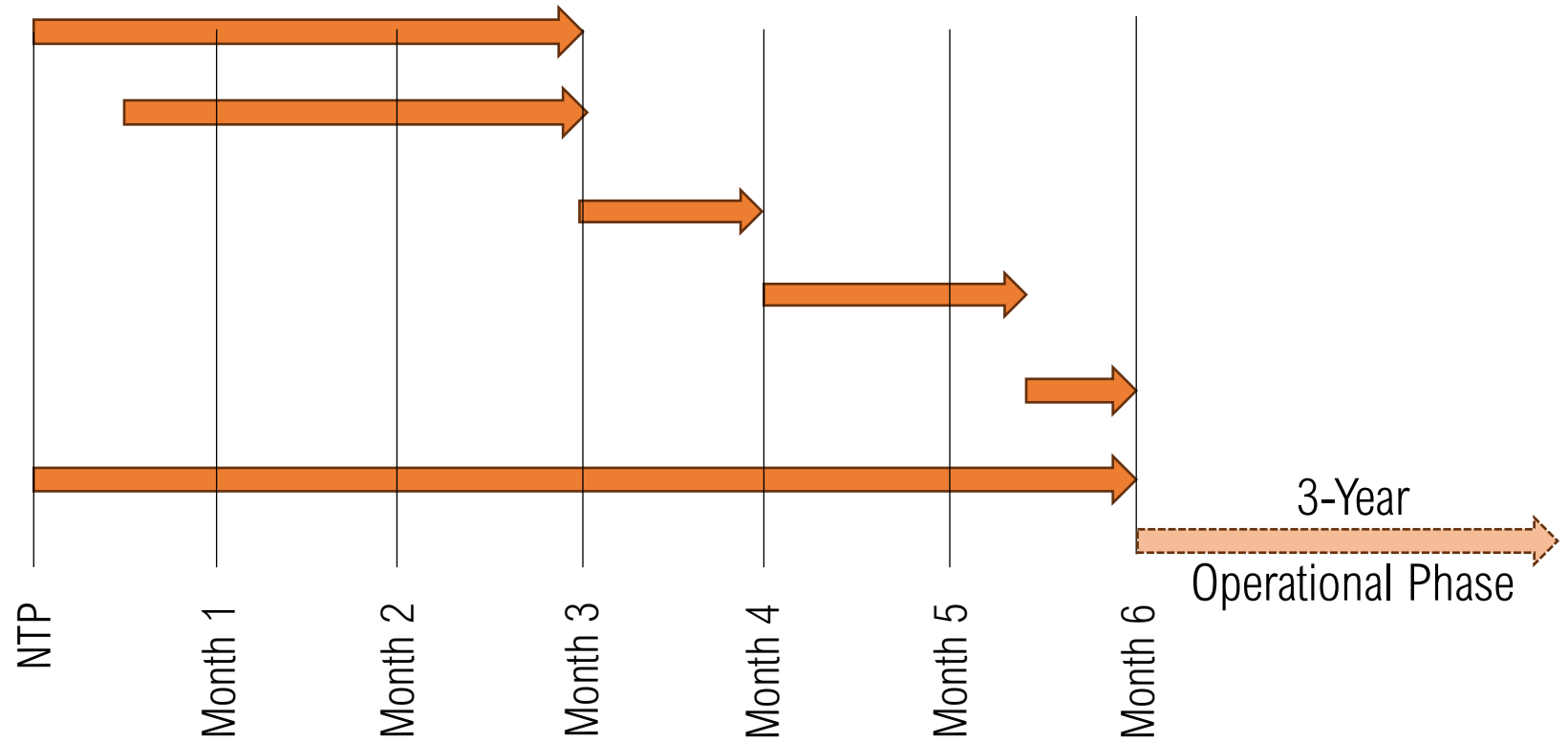


How many cars were lost that could have been easily moved? 100? 200?

Cost:  $100 \times \$20\text{K}/\text{car} = \$2\text{M}$

# RTFF Implementation Plan

1. Model Setup
2. Flood Risk Points
3. Calibration & Testing
4. Coastal & Canal Interfaces
5. Dashboard Training
6. Project Management
7. Operational Phase



# A Real-Time Flood Forecasting (RTFF) System for the City of Palm Coast



Pete Singhofen, PE



**RESOLUTION 2023-\_\_\_\_**  
**REAL-TIME FLOOD FORECASTING**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A WORK ORDER WITH DRMP, INC., FOR ENGINEERING SERVICES FOR REAL-TIME FLOOD FORECASTING AND APPROVAL OF A THREE-YEAR TERM MAINTENANCE AND DEPLOYMENT AGREEMENT; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE, AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, DRMP, Inc., is engaged in a continuing services agreement and desires to provide engineering services for Real-Time Flood Forecasting; and

**WHEREAS**, the City Council of the City of Palm Coast desires to issue a work order under said contract to DRMP, Inc., for the above-referenced services.

**WHEREAS**, Streamline Technologies, Inc., desires to enter a three-year term for maintenance of Real-Time Flood Forecasting; and

**WHEREAS**, the City Council of the City of Palm Coast desires to enter into said agreement with Streamline Technologies, Inc., for the above-referenced services.

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

**SECTION 1. LEGISLATIVE FINDINGS OF THE CITY COUNCIL.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF A WORK ORDER.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a work order to DRMP, Inc., for the Real-Time Flood Forecasting as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 3. APPROVAL OF AN AGREEMENT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of an agreement with Streamline



Technologies, Inc., for deployment and maintenance of the Real-Time Flood Forecasting system as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 4. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.**

The City Manager, or Designee is hereby authorized to negotiate, finalize, and execute the necessary documents.

**SECTION 5. 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 6. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 7. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 8. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Work Order Proposal with DRMP, Inc.  
Streamline Technologies, Inc., Agreement

**PROFESSIONAL ENGINEERING SERVICES FOR  
CITY OF PALM COAST  
REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

This Work Order shall be incorporated in and become part of the Contract for Professional Stormwater and Environmental Engineering Services between City of Palm Coast (CITY) and DRMP, Inc. (DRMP), RFQ-SW-18-10 dated December 18, 2018 hereafter referred to as the Contract. This proposal includes engineering services to; 1) convert existing City-wide ICPR model to a continuous simulation model, and 2) deliver an operational real-time flood forecasting (RTFF) system for the City of Palm Coast. To assist with these services, DRMP is subcontracting with Streamline Technologies, Inc. (SLT) with special expertise in providing RTFF to municipalities.

## **A. PROJECT BACKGROUND**

SLT has developed a real-time flood forecasting system powered by ICPR that automatically retrieves near real-time and forecasted rainfall and evapotranspiration data produced by the National Water Model (NWM) on a 1-km<sup>2</sup> grid. Two (2) simulations are performed by the RTFF each day. A near real-time simulation is updated every hour based on the NWM forcing data. The real-time simulation is used to track current water surface elevations and soil moisture conditions. The second simulation currently uses a 10-day medium range forecast that predicts into the future in 1-hour increments. Typically, the forecast simulation is limited to 4 to 5 days. This forecast derives its initial conditions from the real-time simulation. Results from both simulations are uploaded to a dashboard system that can be accessed through a web browser from any device (e.g., smart phone, tablet, laptop, desktop) that has internet access.

The following paragraphs describe in more detail the scope of services that are anticipated to be performed by the team.

## **B. SCOPE OF WORK**

### **1.0 ICPR RTFF Model Setup**

The Palm Coast model domain is shown in **Figure 1** and encompasses approximately 89 mi<sup>2</sup>. The ICPR4 model for Palm Coast was recently (2019, updated in 2021) compiled by DRMP and is considered current. This model will become the basis for the RTFF system. It will need a few adjustments to make it “forecastable” as outlined in this task.

#### **1.1 Georeference Palm Coast Town Center**

The Town Center area appears to be in the model without georeferencing. All unplaced nodes, links and basins will be spatially located in the model.

**PROFESSIONAL ENGINEERING SERVICES FOR  
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1.2 Expand Terrain Data

The DEM will be expanded in the southern portion of the model domain (see **Figure 2**).

1.3 Impervious Percentage Lookup Table

An impervious percentage lookup table must be created based on the land use map layer and include percentages of total imperviousness and DCIA by land use category. Note that water bodies and wetlands should be 0% impervious for continuous simulation purposes.

1.4 Prepare Soil Map Layer with MUKEY

A map layer for the study area will be prepared based on the NRCS unique soil identifier "MUKEY". A Green-Ampt lookup table will be prepared based on unique MUKEY values.

1.5 Create NEXRAD Grid Map Layer

A NEXRAD map layer will be prepared for the study area. NEXRAD data will be used for calibration and verification of the combined model using the Hurricane Irma and Hurricane Ian storm events. Note that the revised model will utilize the Green-Ampt method whereas the previous modeling effort used the curve number method. Also, the RTFF model will include evapotranspiration. This task includes obtaining the most recent NEXRAD rainfall data from the SJRWMD for calibration/verification purposes.

1.6 Create National Water Model (NWM) Grid Map Layer

The RTFF system uses forcing data (i.e., rainfall and ET parameters) from the NWM based on a 1-km<sup>2</sup> grid. Therefore, a NWM rainfall grid map layer will be created that covers the model domain. This will replace the NEXRAD grid once the RTFF system is deployed.

1.7 Prepare Crop Coefficient Map Layer

A simplified version of the land use map layer will be prepared to establish crop coefficient zones. This is needed for ET computations. A crop coefficient lookup table will also be prepared as part of this task.

1.8 Prepare, Import and Pyramid Aerial Imagery

The most recent aerial imagery for the composite study area will be prepared, imported, and pyramided for the model domain.

**PROFESSIONAL ENGINEERING SERVICES FOR  
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1.9 Operable Structures

Build operational criteria into the model for each of the 18 operable structures.

1.10 Review Bridge Rating Curves

Review the bridge rating curves and adjust as necessary.

1.11 DEM Hydro-Corrections for Flood Risk Point Adaptation

The DEM will be hydro-corrected for flood risk point (FRP) adaptation. Flow paths are generated for each FRP to determine the connection point to the nodal network. The flow paths will be blocked at roadway crossings within individual basins preventing them from being completed to the connection points with the nodal network. Hydro-correcting the flow DEM will eliminate this problem.

1.12 Model Refinements

The ICPR model will be refined in three areas that extend beyond the limits of the 2017 LiDAR. At the southern extreme of the model boundary area, two blocks of missing terrain will be patched with LiDAR from another source. Basins will be refined and accompanying nodes and links will be added to the model. Additionally, LiDAR will also be added so the model boundary can be expanded along Black Branch to set an outfall condition at the US 1 bridge. With limited bridge data, the opening may be approximated as a set of box culverts. Necessary model revisions will be performed at the west end of Matanzas Woods Parkway. Additionally, the LiDAR terrain and aerial will be compared to the model setup and refinements will be made to match conditions to the extent feasible for up to 20 additional basins. Note that no survey work is included in this task. Hydraulic data will be collected by desktop review or estimated with field verification of conditions.

**PROFESSIONAL ENGINEERING SERVICES FOR  
CITY OF PALM COAST  
REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

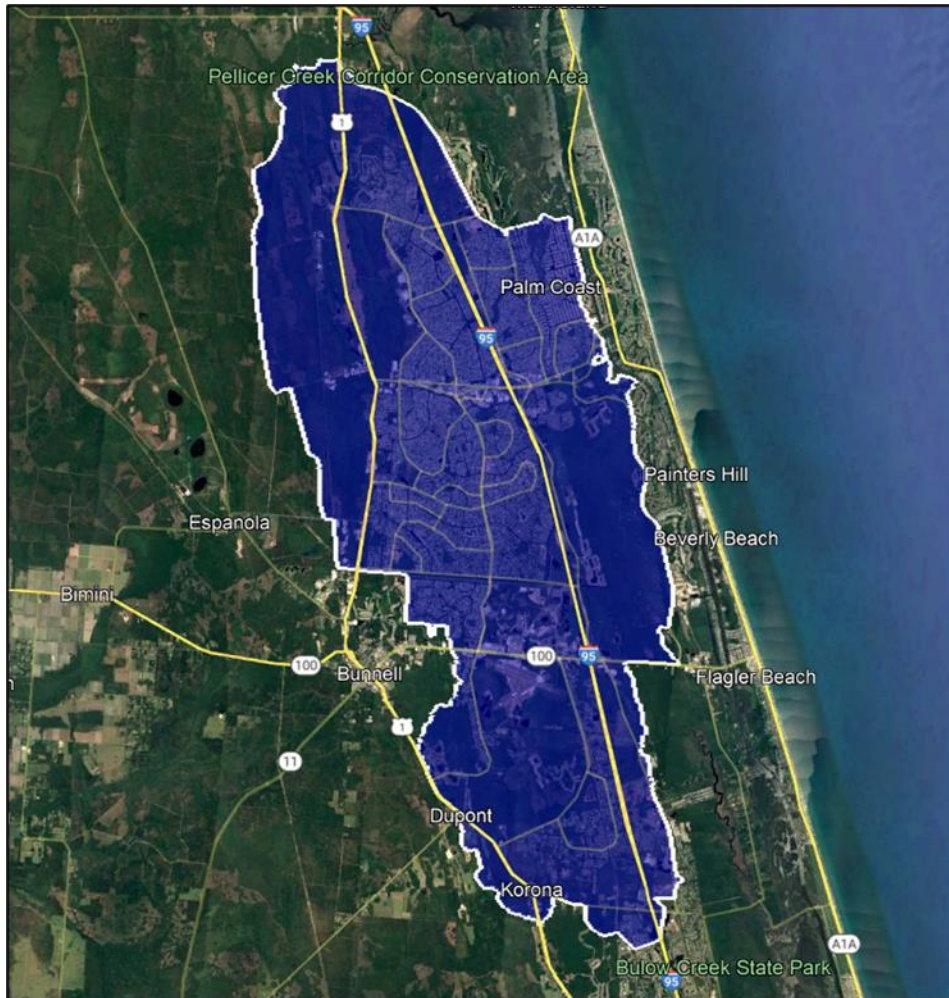


Figure 1. City of Palm Coast Model Domain (89 mi<sup>2</sup>).

**PROFESSIONAL ENGINEERING SERVICES FOR  
CITY OF PALM COAST  
REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

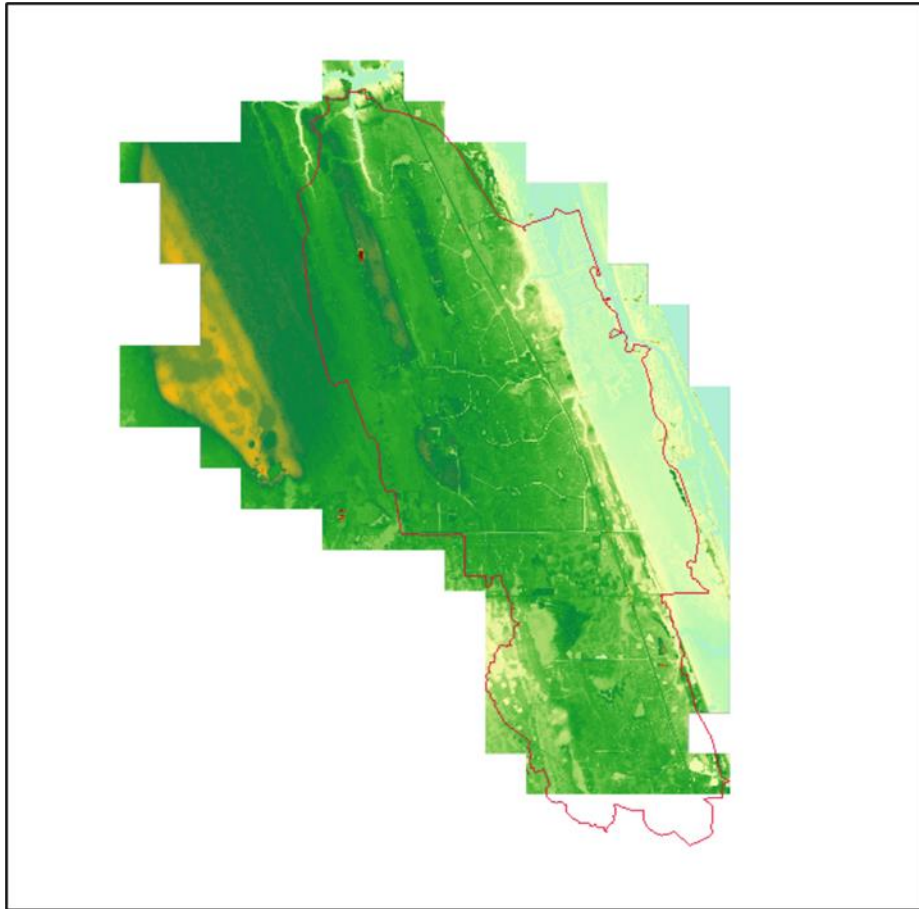


Figure 2. Extents of Lidar-Based Terrain Data.

## 2.0 Flood Risk Points

A flood risk point is a specific location within the model domain (e.g., roadway intersections, low points on roadways, buildings, critical infrastructure). Flood warning and flood alert elevations are specified for each flood risk point. If water surface elevations exceed either the warning elevation or the alert elevation, orange and red points are displayed in the dashboard system, respectively, as shown in **Figure 3**. Also, if either the flood warning or flood alert stages are exceeded, a text message can be automatically issued to all phone numbers included in a watch list provided by the City. Flood risk points will be incorporated into the model domain.

**PROFESSIONAL ENGINEERING SERVICES FOR  
CITY OF PALM COAST  
REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

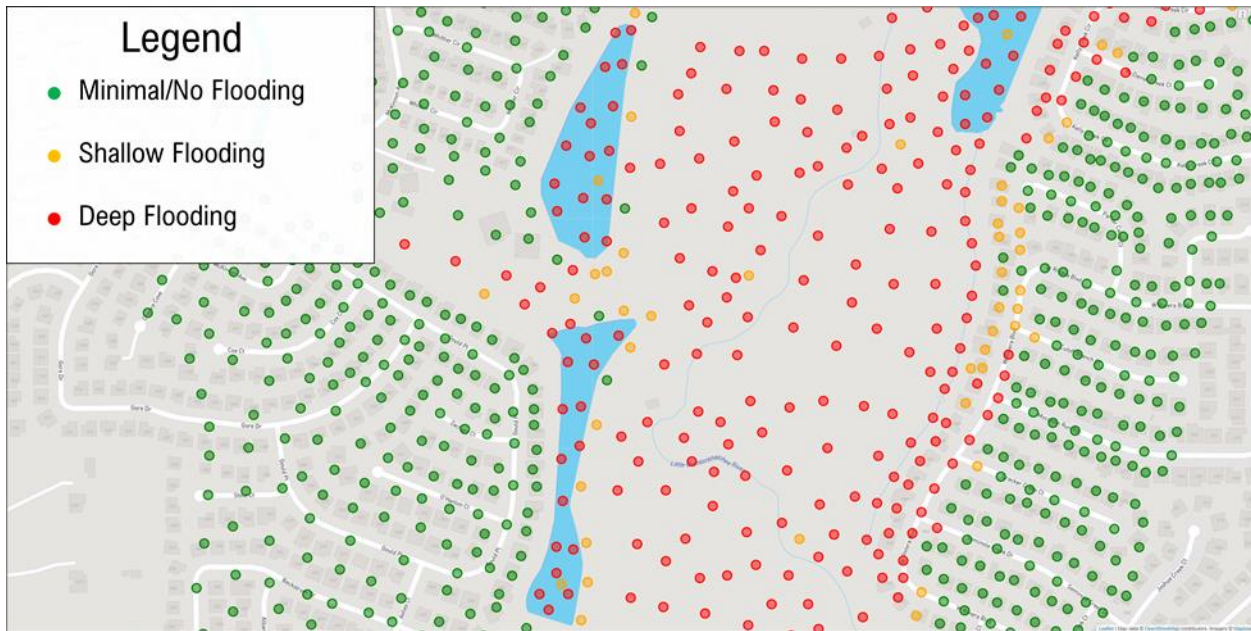


Figure 3. Example of “flood warning” and “flood alert” flags displayed on the RTFF dashboard system.

### 2.1 Develop Flood Risk Polygons

Flood risk polygons are used as part of the flood risk point (FRP) development process. Relationships are developed between individual flood risk points within a given flood risk polygon and the hydraulic computational framework. The basin map layer will be the primary source of the flood risk polygons, but multiple basin polygons will be aggregated into larger flood risk polygons and adjustments will be made to the polygons where necessary.

### 2.2 Develop Flood Risk Points within Each Flood Risk Polygon

Various flood risk points will be placed within each flood risk polygon. One point will be placed inside each available building footprint either provided by the City, or obtained from an open data source such as Microsoft Building Footprints. Street addresses will be included for each building point. Surveyed finished floor elevations will be used to set flood warning and flood alert elevations if and where they are available. Otherwise, the highest elevation inside the building footprint from Lidar-based terrain data plus 0.1' will be used as the flood warning elevation and the flood alert elevation will be set to the flood warning elevation plus 1.0 foot. Flood risk points will also be placed along roadways at a spacing no greater than 250 feet, but at least at all roadway intersections. Flood warning elevations will be set to 0.1' above the LiDAR-based ground elevation at each roadway point and flood alert elevations will be set 1.0' above the flood warning.

**PROFESSIONAL ENGINEERING SERVICES FOR  
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Street names plus a unique index will be used for each of these points. Flood risk points can be included at other critical infrastructure such as sanitary lift stations if these locations and descriptions are provided by the City.

### 3.0 Calibration, Verification and Testing

The model will be calibrated using a storm of recent memory based on NEXRAD rainfall data and verified using a second storm. The model will then be tested using the NWM data set. The only calibration/verification parameters to be adjusted during this process will be the Green-Ampt parameters and the Impervious Percentage parameters. No changes will be made to major model components.

### 4.0 Coastal and Internal Canal Interfaces

#### 4.1 Live Stream Gauge Data

USGS 02247222 (Pellicer Creek Near Espanola, FL) will be used as boundary conditions at model connection points along the Matanzas River. Live observed water levels at this station will be used in the deployed RTFF system for the “real-time” portion of the simulation. Since forecast data is not available at this station, the last live water surface elevation will be used for the forecast simulation.

#### 4.2 Live Internal Canal Gauge Data

If live water surface elevations are available internally for the Palm Coast canal and water control structure system and can be accessed through an API, these live stages will be used in the real-time simulations. Forecasted elevations at these locations will be calculated based on hydrologic and hydraulic conditions.

#### 4.3 Evaluate Other Options

Other options will be evaluated for forecasted water levels along the Matanzas River including but not limited to use of Renaissance Computing Institute at UNC (RENCI) forecasts, use of NOAA’s PSURGE forecasts, and development of a new coastal forecast system. A recommendation will be made to the City regarding the outcome of this evaluation. Implementation of the recommendation will occur as a future phase and at the City’s discretion and authorization.

### 5.0 Dashboard Training

SLT will provide basic virtual training to City staff on the dashboard system. Access to the dashboard will be password protected and limited to City staff.



**PROFESSIONAL ENGINEERING SERVICES FOR  
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REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

6.0 Project Management

DRMP will manage the overall project with assistance from SLT. DRMP will administer progress meetings, organize project deliverables, maintain project schedule and perform general project administration.

**C. DELIVERABLES**

The Team will provide to the City the following deliverables:

1. Electronic ICPR4 files and accompanying input and output GIS files.
2. Deployment of RTFF System.

Note that maintenance of the ICPR RTFF System is submitted under separate proposal directly from SLT (not included in this proposal).

**D. CITY RESPONSIBILITIES**

In order to conduct the scope of work outlined above, the City will provide the following:

1. Provide infrastructure flood risk data, historical flooding information, access to City gauge data and other information needed to develop the RTFF system.

**E. SCHEDULE**

Deployment of the RTFF system will occur within **six (6) months** of NTP. A detailed schedule will be developed upon acceptance of the proposal.

**F. LIMITATIONS**

The scope of work described in this proposal relies on the watershed model “as is” with the exceptions noted in Task 1. Verifying the accuracy of the underlying drainage infrastructure data, including channel cross sections and structure operations, is not included. Real-time flood forecasting is an inexact science, and the Streamline RTFF system relies on forecasted rainfall and other meteorological data produced by the National Water Center and the National Water Model.

**PROFESSIONAL ENGINEERING SERVICES FOR  
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REAL TIME FLOOD FORECASTING  
GENERAL DESCRIPTION OF SERVICES**

**G. COMPENSATION**

Compensation for this Scope of Work will be paid on a not-to-exceed basis, in the amount of **\$247,099.00**, as detailed in **Table 1** below. The project will be invoiced to the City on a monthly basis based on manhours spent at the time of billing.

Table 1. Schedule of Fees

<b>Task</b>	<b>Description</b>	<b>Total Fee</b>
	<b>RTFF Model Setup</b>	
<b>1</b>	ICPR RTFF Model Setup	\$116,915.00
<b>2</b>	Flood Risk Points	\$41,430.00
<b>3</b>	Calibration, Verification & Testing	\$16,200.00
<b>4</b>	Coastal and Internal Canal Interfaces	\$39,800.00
<b>5</b>	Dashboard Training	\$3,500.00
<b>6</b>	Project Management	\$29,050.00
	Reimbursables	\$204.00
	<b>Grand Total</b>	<b>\$247,099.00</b>



June 19, 2023

Mr. Camelo Morales, PE  
Stormwater Engineer, City of Palm Coast  
160 Lake Avenue  
Palm Coast, FL 32164

Re: Proposal for 3-Year Deployment and Maintenance of Real-Time Flood  
Forecasting System

Dear Mr. Morales:

I am pleased to submit this proposal for the deployment and maintenance of the Real-Time Flood Forecasting system for the City of Palm Coast. The ICPR RTFF system will be deployed on an SLT server immediately following completion of the model setup described in a separate proposal prepared by DRMP. The system will be deployed for a period of three years. This task includes all license fees associated with the RTFF system, computational costs, and normal O&M associated with operating system and hardware updates such as restarting simulations due to routine computer maintenance and downtime. The total fee for this effort is \$75,000 to be invoiced in (3) separate increments of \$25,000 at the beginning of each year of deployment. Access to the dashboard will be provided to the city. Thank you and I look forward to working with you on this project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Singhofen', is written over a light blue circular watermark.

Peter Singhofen, PE  
Vice President

cc. John Minton, PE (DRMP)

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>	\$128,613.00
<b>Division</b>	ENGINEERING	<b>Account #</b>	54205509-03100
<b>Subject:</b> RESOLUTION 2023-XX APPROVING A WORK ORDER WITH ENGLAND-THIMS & MILLER, INC., TO PROVIDE ENGINEERING SERVICES FOR WATER QUALITY MONITORING PROGRAM IMPLEMENTATION			
<b>Presenter:</b> Carmelo Morales, Stormwater Engineer III			
<b>Attachments:</b>			
<ol style="list-style-type: none"> <li>1. Presentation</li> <li>2. Resolution</li> <li>3. Work Order/Proposal</li> </ol>			
<b>Background:</b>			
<b>Council Priority:</b>			
<b>B. Safe and Reliable Services</b>			
<p>On August 18, 2020, Council approved a work order with England-Thims &amp; Miller to develop a Citywide water quality monitoring strategy that would direct a long-term vision for a future monitoring program and be a prioritization tool for identification of watersheds of the highest priority. The development of a monitoring plan was intended to be an extension of the water quality monitoring strategy and provide specific guidance for the City regarding monitoring locations and approaches. The development of the Plan included a desktop survey to select potential monitoring locations within the four highest priority watersheds and a field investigation of those locations to finalize the site selection and appropriate data collection approaches for the four sites.</p> <p>On April 19, 2022, Council approved a work order with England-Thims &amp; Miller to monitor a pilot water quality monitoring station that was installed in the Lehigh Canal watershed, which was one of the four priority watersheds identified in the water quality monitoring strategy. The project included a retrofit of the City’s R-1 station to a new Campbell Scientific data collection platform, the installation of real-time water quality sensors, a secondary stage measurement sensor and rainfall gage, and the development of dashboards to visualize data and control the R-1 actuator.</p> <p>Based on the results of this initial pilot project, City staff installed a new water quality station in the Matanzas River watershed (also a priority watershed identified in the Strategy) and chose the location where Big Mulberry Branch (BMB) flows into Long Creek (LC). Staff also relocated the R-1 water quality sensors elsewhere in the Lehigh Canal watershed, to the L-4 location. City staff request approval of a work order for the continuation of the water monitoring implementation network.</p>			

Under the existing contract (RFSQ-CD-19-70), staff is in the process of negotiating a scope and fee England-Thims & Miller. As of the date of this agenda item the cost sits at \$128,613; the total fee is expected to be lower but shall not exceed this amount. City staff has determined that the cost of services is reasonable and fair and consistent with these types of services for a project of this size and scope.

Funds for this project have been budgeted for out of FY 2024 Stormwater Engineering account.

<b>SOURCE OF FUNDS WORKSHEET FY 2024</b>	
<b>Stormwater Engineer 54205509-03100</b>	<b>\$450,000.00</b>
Total Expended /Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$128,613.00</u>
<b>Balance</b>	<b><u>\$321,387.00</u></b>

**Recommended Action:**  
**ADOPT RESOLUTION 2023-XX APPROVING A WORK ORDER WITH ENGLAND-THIMS & MILLER, INC., TO PROVIDE ENGINEERING SERVICES FOR WATER QUALITY MONITORING PROGRAM IMPLEMENTATION**

**RESOLUTION 2023-\_\_\_\_**  
**WATER QUALITY MONITORING PROGRAM**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A WORK ORDER WITH ENGLAND-THIMS & MILLER, INC., FOR ENGINEERING SERVICES FOR THE WATER QUALITY MONITORING PROGRAM; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE, AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, England-Thimes & Miller, Inc., is engaged in a continuing services agreement to provide engineering services for the water quality monitoring program; and

WHEREAS, the City Council of the City of Palm Coast desires to issue a work order under said contract to England-Thims & Miller, Inc., for the above-referenced services.

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

**SECTION 1. LEGISLATIVE FINDINGS OF THE CITY COUNCIL.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF A WORK ORDER.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a work order to England-Thims & Miller Inc., for the water quality monitoring program as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.**

The City Manager, or Designee is hereby authorized to negotiate, finalize, and execute the necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Work Order Proposal with England-Thims & Miller

# CITY OF PALM COAST – FY 2023/2024 SCOPE OF SERVICES MONITORING PROGRAM IMPLEMENTATION

## Introduction

In Spring of 2021, the City hired the team of ETM and Woolpert (ETM/Woolpert) to develop a City-wide water quality monitoring strategy (Strategy) that would direct a long-term vision for a future monitoring program and be a prioritization tool for identification of watersheds of the highest priority. Following acceptance of the Strategy by the City, ETM/Woolpert began the development of a monitoring plan (Plan) that was intended to be an extension of the Strategy and provide specific guidance for the City regarding monitoring locations and approaches (e.g. instrumentation). The development of the Plan included a desktop survey to select potential monitoring locations within the four highest priority watersheds and a field investigation of those locations to finalize the site selection and appropriate data collection approaches for the four sites.

In Fall of 2021, the ETM/Woolpert team (in collaboration with Xylem/YSI) installed a water quality monitoring station in the Lehigh Canal watershed (a priority watershed identified in the Strategy). The project included a retrofit of the City's R-1 station to a new Campbell Scientific data collection platform, the installation of real-time water quality sensors, a secondary stage measurement sensor and rainfall gage, and the development of dashboards to visualize data and control the R-1 actuator.

In Fall of 2022, based on the results of this initial pilot project, the City decided to install a new water quality station in the Matanzas River watershed (also a priority watershed identified in the Strategy), and chose the location where Big Mulberry Branch (BMB) flows into Long Creek (LC). The City also decided to relocate the R-1 water quality sensors elsewhere in the Lehigh Canal watershed, to the L-4 location.

Entering Fall of 2023, the City has expressed the following goals for its monitoring network.

- (1) Collect water quality, rainfall, and stage data at BMB/LC and L-4.
- (2) Upgrade controls and stage data collection at the P-1 location to use Campbell Scientific instrumentation similar to other recently upgraded stations.

The following scope of work includes a variety of services including the following:

- Purchase of equipment and installation of instrumentation for upgrades at P-1.
- Operation and maintenance of instrumentation at BMB/LC, L-4, and P-1.
- Calibration of water quality sondes at BMB and L-4.
- Data hosting and oversight of the data from BMB/LC, L-4, and P-1 until September 30, 2024.
- On-call assistance to provide technical support to City staff on instrumentation at BMB/LC, L-4, and P-1 until September 30, 2024.
- Collection of wet weather grab samples at BMB and L-4 and coordination with the laboratory for water quality analysis.
- Guidance on collection of dry weather grab samples at BMB and L-4 by City staff and coordination with the laboratory for water quality analysis.
- Development of a technical report summarizing the results of the water quality data collection at BMB.

The proposed scope of work below follows the recommendations outlined in Section 1.0 of the Plan. For this scope of services, the locations will be referred to as BMB, LC, L-4, and P-1, as defined previously.



## Task 1 – P-1 Station Installation

This task is for the augmentation of the City’s P-1 canal level control station which is currently operated manually by removing and replacing flashboards on the downstream end of a riser structure. The City intends to augment this structure by adding electrically actuated/controlled gates that can be controlled locally from the bank as well as remotely via smart phone, tablet, or desktop interfaces. The City does not intend to monitor water quality at P-1 at this time.

### Task 1.1 – Design and Implementation Coordination

Woolpert will assist the City with coordinating with contractors to ensure that the P-1 station is in a condition similar to R-1 and L-4 when Xylem-YSI/Woolpert begin controls integration. This will include consultation on the location of the controllers, measurement and control instrumentation, and wiring diagrams. Woolpert will provide up to 20 hours of consulting services for this task to ensure that P-1’s controls are ready for Xylem-YSI integration services to begin. See Assumptions section at the end of this scope of services for an understanding of responsibilities.

### Task 1.2 – Station Integration

Woolpert will retain and manage Xylem-YSI’s Integrated System and Services (ISS) team to perform the integration of data collection and control electronics at the City’s P-1 canal control station. As the contractor who performed the near identical upfits for R-1 and L-4, ISS is familiar with the existing City stations and understands the project needs. ISS will purchase all of the needed construction materials and equipment for the upfit. Woolpert will oversee the integration of controls for the canal spillway structure which will include, but not be limited to:

- Installation of a Nile Radar
- Installation of a TB4 rain gauge
- Installation of cables/wiring
- Installation of an enclosure to house modem/datalogger
- Integration of these components with AC power and gate controls (both installed prior to ISS arrival)

This task includes final on-site review/approval, by Woolpert, of the station enhancements and includes travel expenses for a senior Woolpert systems integration and programming specialist. Upon completion of the data collection and control integration, this task includes efforts to perform testing and troubleshooting of the datalogger programs developed under Task 2 and Task 3.

### Task 1.3 – Campbell DCCP Programming

The Campbell data collection and control platform (DCCP) will need to be configured and programmed to receive data from the Nile Radar (level), gate controller, and rain gauge. Water level and rainfall data will be recorded to datalogger tables every 15 minutes and transmitted every 15 minutes. Relevant elevations (e.g., top of weir, top of bank, electronics elevations) will be provided to Woolpert by the City for inclusion in datalogger programming and alerting. Similarly, water surface elevations will be calculated from surveyed Nile radar elevations and weir cap elevations coupled with manual measurements to water surface.

Datalogger programming will include alerts for low battery voltage and up to three other alarm conditions related to the sonde data that are specified by the City. Communication with the datalogger will be via cellular modem which will require a public, static IP address. Woolpert will assist with communication between the City and their preferred cellular service provider.

The P-1 Campbell datalogger/controller will need to be programmed to provide the same manual and automated control of the actuator/gate that is currently available at R-1 and L-4. After conversations with City personnel, Woolpert understands that the City will require the following gate control options at P-1:

- Manual Control- On-site, through Auma controllers (AC 01.2), mounted at enclosure rack
- Manual Control- Remote, through Campbell Scientific data collection platform (DCP)
- Automated Control- Remote, utilizing thresholds specified in the Campbell Scientific DCCP

Woolpert will customize the P-1 datalogger program to include virtual “buttons” that will allow City personnel to manually control the gate positions remotely from a smart phone or computer using a web-based human machine interface (HMI) (e.g., Campbell’s RTMC Pro or Eagle IO dashboard), Campbell’s LoggerNet Connect client, and LoggerLink mobile datalogger support software. Datalogger programming will also include automated actuator/gate responses to water level thresholds which will be defined by City personnel. Thresholds will be variables in the program that can be adjusted through the web-based HMI, LoggerNet Connect, or LoggerLink software. The program will include a virtual “button” that will allow City personnel to switch between automated and manual control, similar to the on-site control panel.

Woolpert will work closely with ISS to ensure successful handoff and integration of new system components and operation of the gate into the Campbell DCCP.

## Task 2 – Data Hosting/Visualization

Since the initial setup of the Vista Data Vision (VDV) webpages to support the City monitoring network, VDV has been purchased by Bentley Systems. The recurring cost to remain on the VDV platform is no longer economical or advantageous for Woolpert’s clients. For this reason, the City’s data will be migrated into a more economical dashboard and cloud-based platform, Eagle IO, which will be managed by Woolpert. Ongoing data hosting and visualization of R-1, Big Mulberry Branch, Long Creek, and L-4 data will be in the Eagle IO platform. Since the City’s monitoring network and historical dataset are relatively young, the migration from VDV to Eagle IO is not expected to interrupt current data hosting services. Migration to Eagle IO will include the following tasks:

- Create private, public, and partner logins or direct access links if needed
- Connect and create sites and dashboards
- Integrate GIS data, where available, for development of mapping to support the webpage

Upon completion of the migration to Eagle IO, Woolpert will provide oversight (biweekly) and review of the field data associated with the monitoring network. The real-time data will continue to be transmitted every fifteen minutes for high frequency interpretation and/or maintenance needs. In the event of significant adverse conditions (i.e., suspected sanitary sewer overflow), Woolpert will immediately notify the City of these observations to facilitate potential illicit tracking; additional, less time sensitive maintenance/equipment observations will be cataloged in a Google Sheet for routine reference by the City. The data hosting effort will help identify any potential problems as they occur and reduce the potential for inaccurate reporting over significant periods of time. As is the case with VDV, Woolpert will include a monthly data hosting pass through fee from Eagle IO.

Woolpert will revise the web-based HMI gate control dashboard developed for R-1 and L-4 to include digital controls for the P-1 gate. The HMI dashboard will allow the City to quickly assess the conditions (water level) of the canal, the position of the actuators/gates, and control/adjust the position of the actuators/gates. Water level and actuator/gate positions will be updated in the HMI as often as every 10 seconds when a user is directly connected to the P-1 station; otherwise data will be recorded to datalogger tables every 15 minutes.

This task also includes guidance for City personnel on two actuator/gate control options- HMI (tablet or desktop control) and LoggerLink (mobile application control)- that provide flexibility for viewing station status and controlling gate position.

## **Task 3 – Operation and Maintenance**

The City has recently retained Woolpert to take over responsibilities associated with operation and maintenance of the monitoring equipment at the stations, including calibration of the water quality sondes. As outlined in Section 1.1 of the City's Monitoring Plan, Woolpert recommends assorted forms of routine maintenance and will provide the following services to assist the City.

### **Task 3.1 – Water Quality Sonde Calibration**

This task includes cleaning, calibrating, and routine maintenance of the City's water quality data sondes according to laboratory and manufacturer-approved standard operating procedures. Data sondes are deployed for approximately 8 weeks between calibration activities. Woolpert will calibrate the City's water quality station data sonde(s) at the end of each deployment period. After calibration and equipment verification takes place at the City's office, the data sonde(s) will be redeployed.

This scope provides for up to seven (7) calibration field visits to maintain and calibrate the City's data sondes. Each calibration field visit includes drive time to and between the monitoring locations and City facilities, instrument calibration, data management (downloading/compiling field data and diagnostics), supply inventory management (tracking consumables such as calibration solutions and sonde replacement parts and purchasing when needed), and deployment of the data sondes back into the monitoring stations. On a given calibration field visit, both sondes (BMB and L-4) will be calibrated in the manner described above.

### **Task 3.2 – Rain Gauge Verification**

Routine inspections of the City rain gauges will take place twice (most likely in Fall and Spring) during the data collection period. During each inspection, Woolpert will document the recording accuracy of rain gauges located at R-1, Long Creek, L-4, P-1, and up to 4 other City-owned rain gauges (locations TBD) by simulating two different rainfall intensities. If a rain gauge does not record within 5% of the expected volume, Woolpert will recommend returning the gauge to the manufacturer for calibration.

### **Task 3.3 – On-Call Technical Assistance**

Woolpert will continue to provide on-call technical assistance to the City. This task will include, but not be limited to, challenges with the cell service provider, firmware updates, potential malware, modem re-booting, assisting remotely with water quality sensor troubleshooting, gate control support, HMI and/or control interface support, and integration of new or existing City equipment otherwise outside of the intent of this scope. Woolpert may also provide general assistance with other City needs associated with their monitoring network. This task includes an average of 6 hours/month or up to 72 hours of total on-call technical assistance over the 12-month period until September 30, 2024.

## **Task 4 – Grab Sample Collection**

As recommended in Section 1.2 of the City's Monitoring Plan, Woolpert will collect manual storm flow (wet weather) grab samples at BMB and L-4 to supplement the continuous sensor data. Additionally, Woolpert will provide guidance to City staff on collection of manual base flow (dry weather) grab samples at BMB and L-4. This data will considerably enhance the City's ability to assess these watersheds and to characterize potential sources of pollutants that may impact existing or potential future downstream FDEP impairments. Woolpert will coordinate with Advanced Environmental Laboratories (AEL) to obtain sample bottles, chain of custody forms, and coordinate sample delivery throughout the contract term. Laboratory analysis will be requested for parameters that were previously identified in the City's Monitoring Plan as priorities within the two monitored watersheds as follows:

- Total Phosphorus (TP), orthophosphorus
- Total Nitrogen (TN), total kjeldahl nitrogen, nitrate
- Total Suspended Solids (TSS)
- Iron, hardness
- Chlorophyll-a

Pending appropriate weather and environmental conditions that coincide with laboratory availability, wet and dry weather samples will be collected with **quarterly/seasonal targets** as follows:

- Two wet weather events, 2 samples per event at 2 locations (up to 8 samples/season)
- Two dry weather events, 1 sample per event at 2 locations (up to 4 samples/season)

In total, the **maximum number of samples** that may be collected and analyzed over the scoped period will include:

- Up to 32 wet weather samples collected by Woolpert staff
- Up to 16 dry weather samples collected by City staff

The analytical results and subsequent analysis will help characterize water quality throughout the year and provide a much more reliable depiction of local conditions. This will arm the City to address current and future MS4 permit requirements, evaluate the City's SWMP for appropriate BMPs, respond to citizen or agency concerns about general water quality conditions, and develop relationships between continuous and discrete data for more comprehensive annual watershed summaries. All laboratory costs are included in the Reimbursable Expenses of this scope of work.

## Task 5 – Data Management, QA/QC and Reporting

The City's continuous data (e.g., rainfall, water level/elevation, and water quality data) will be managed in Kisters' Wiski software. Data will be imported into Wiski from the web interface or from files downloaded directly from recording devices (e.g., sonde). Corrections (e.g., drift corrections, deletions) to the data will be applied, as needed, at the end of each sonde deployment period. Correction decisions will be based on field observations as well as documentation of sensor calibration/performance, which will be assessed at the end of each deployment using calibration standard solutions.

Quality Assurance and Quality Control (QA/QC) practices will include, but not be limited to, calculation of descriptive statistics for the raw and corrected datasets following each data correction period. Additionally, a graphical review of raw and corrected data will be performed by Woolpert personnel that did not perform corrections to ensure that erroneous or non-representative data is not included in the City's corrected datasets.

The City's grab sample data will be catalogued as pdfs and excel files, generated by Advanced Environmental Laboratories (AEL). The results will be summarized in an Excel file. QA/QC of grab sample data will consist of review of laboratory reporting and detection limits, comparison of laboratory results to FDEP standards, and comparison of results to previous City grab sample results for consistency and reasonability. Woolpert will communicate with AEL regarding unusual reports.

Upon developing the final dataset (data collection period for the report TBD based on City needs/preference), Woolpert will develop a technical report for data collected at BMB including statistical analyses for all continuously recorded parameters and laboratory results. Data will be provided in appropriate tables and graphs to assist with temporal and spatial trend analysis and data interpretation. This will include characterization of results during dry and wet conditions to improve the City's ability to characterize potential pollutant sources and possible BMP needs. Data will also be compared to FDEP regulatory standards where appropriate.

## Task 6 – Project Management

This task includes routine project management responsibilities including vendor management, client correspondence, and internal scheduling/team coordination.

### Expenses

Expenses requiring reimbursement may include but are not limited to mileage (or work truck rental fees), equipment/material costs for P-1 station installation, ISS/Woolpert travel expenses, sonde operation/maintenance supplies, monthly data hosting fees, and AEL laboratory analysis costs. Reimbursable expenses will be invoiced to the City with no additional mark-up from ETM/Woolpert.

### Data Hosting Terms

Woolpert's data hosting responsibilities are intended to ensure that data is stored in such a manner as to permit access by the City, as well as interested and affected parties as designated by the City. Woolpert's data hosting responsibilities are:

- a) Install, maintain, and operate software to host data from each monitoring station. This responsibility shall include customary maintenance of the software and associated servers during normal business hours which are defined as 8:00 AM to 5:00 PM EST/EDT, Monday through Friday, and not including the following holidays- New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and the day after, and Christmas Day.
- b) Program modems at each monitoring station to call the server at selected intervals with appropriate phone numbers and routing information.
- c) Provide timely responses to the partners on the access of the data, including changes and/or upgrades to the system.
- d) Each station will be setup on the web page for viewing purposes and various security levels will be setup to maintain data security
- e) Designate, by name or position a representative who shall act as the Woolpert Data Hosting Coordinator and designate also at least one back-up representative.

Data displayed on the web page will be raw field data and will not have any quality control routines or checks prior to posting. Each individual user of the real-time data will be responsible for any quality control processes before use. Woolpert cannot and does not warrant the accuracy of the real-time data and shall not be responsible for any use of such data.

### Project Assumptions/Notes

- Due to the location of the stations and the need for in-stream data, debris and potential damage during a high flow event will always be a risk. Woolpert will take precautions to minimize such risk including the installation of electronics as high as practical (yet still accessible). This scope of work does not include services associated with replacement of any components of the station if destroyed due to water, lightning, or debris.
- This scope does not include signage for the monitoring station or fencing for safety or to deter potential vandalism. The City may want to consider one or both of these features.
- The City will be responsible for the monthly payment of cellular service through their preferred cellular carrier for each of the station modems. This small expenditure is not part of this proposed contract.

- The City will survey the new stations after installation to allow for Woolpert to provide stage information and other points of reference (e.g., top of bank) relative to a preferred vertical datum on the monitoring website.
- The City should coordinate with the Channel Side Event Center regarding station aesthetics and access through their property, if still needed.
- Woolpert will have access to the City's calibration solutions, supplies, and workspace to calibrate/maintain the City's sondes/sensors.
- P-1 gate controller will be installed at the enclosure rack where the Xylem-YSI datalogger enclosure will be installed. The City will ensure that ISI, or other actuator vendor, installs the controller at the enclosure rack.
- P-1 gate motor, actuator, and controller will be Auma products, or equivalent, in terms of wiring and control signals (i.e., 4-20 mA setpoint and position signals).

## Compensation

ETM/Woolpert and Xylem-YSI estimates the following fee for each of the requested services:

Task Number	Task	Fee
Task 1	P-1 Station Installation	\$14,380
Task 2	Data Hosting/Visualization	\$16,710
Task 3	Operation and Maintenance	\$29,970
Task 4	Grab Sample Collection	\$19,305
Task 5	Data QC and Reporting	\$35,185
Task 6	Project Management (Woolpert)	\$12,830
Task 7	Project Management (ETM)	\$5,580
	<b>Labor Sub-Total</b>	<b>\$133,960</b>
	<b>Reimbursable Expenses</b>	<b>\$2,665</b>
Xylem-YSI	P-1 Station Installation	\$25,034
Xylem-YSI	Scheduled Sonde Parts and Regular Maintenance	\$4,800
Contingency	Contingency for Unexpected Sonde or Station Equipment Needs	\$5,000
AEL	Laboratory Testing	\$13,200
	<b>Sub-Contractor and Equipment Sub-Total</b>	<b>\$48,034</b>
	<b>Total</b>	<b>\$184,659</b>

Compensation for these services shall be billed hourly based on the labor classifications and hourly rate table below.

## Woolpert Hourly Rate Table

Labor Classification	Hourly Rate
Administrative Assistant	\$60
Billing Manager	\$75
Enviro Scientist I	\$80
Junior Professional/EIT	\$95
Enviro Scientist II	\$100
Task Manager	\$115
Prof Engineer I	\$120
Phase Manager	\$135
Prof Engineer II	\$140
Project Manager I	\$150
Technical Specialist	\$165
Project Manager II	\$170
Senior Programmer	\$185
Project Manager III	\$190
Customization Specialist	\$210
Project Director	\$235



# Water Quality Monitoring Program

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## Program Background

The City of Palm Coast is currently registered (State Requirement) in a Phase 2 Municipal Separate Storm Sewer System (MS4) Permit with the Florida Department of Environmental Protection.

- This permit shall convert to a Phase 1 once the city's population reaches 100,000.
- Some of the Phase 1 additional requirements include:
  - Identifying major outfalls and pollutant loadings.
  - Detect and eliminate non-stormwater discharges to the system.
  - Reduce pollutants in runoff from industrial, commercial and residential areas.
  - Control stormwater discharges from new development and redevelopment areas.
  - Implement a monitoring/assessment program.
  - Address Total Maximum Daily Loads (TMDLs) for regulated MS4s that discharge into TMDL water bodies.



## Program Background

In 2020 the city's stormwater department took a proactive approach and began taking steps in the implementation of a water quality monitoring program.

The strategy for the monitoring plan considers:

- Florida Department of Environmental Protection (FDEP) regulatory requirements
- Historical local water quality data and associated trends
- Sources of risk for water quality
- Potential consequences of adverse water quality, and
- The integration of water quality monitoring into the City's canal flood monitoring network

## Program Timeline

The Original Letter of Interest (LOI-SWE-20-49) for Water Quality Services was issued on May 12, 2020

England-Thims & Miller was the highest ranked qualified consultant and was awarded a contract to implement Water Quality Monitoring Program (Phase 1)

- September 4, 2020
- Cost – \$105,435.00

England-Thims & Miller, Inc. awarded contract to install Water Quality/Level Monitoring Pilot Station

- August 2, 2021
- Cost – \$23,580.00

England-Thims & Miller, Inc. awarded contract for Phase 2 Water Quality Monitoring Program

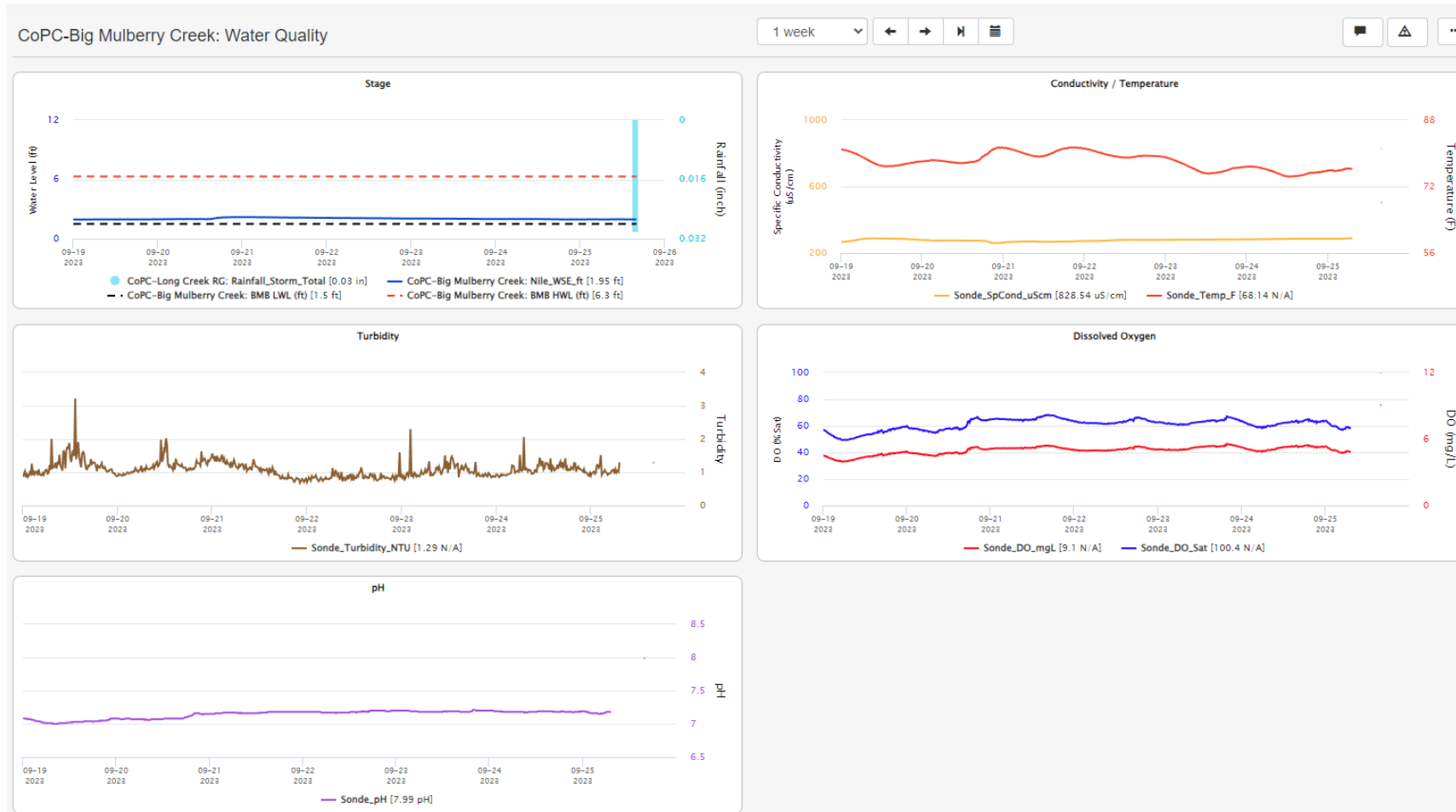
- May 4, 2022
- Cost – \$112,193.00

## Program Scope of Work

The Scope of Work for the proposed water quality services shall include:

- Operation and maintenance of instrumentation at BMB/LC and L-4.
- Calibration of water quality sondes at BMB and L-4.
- Data hosting and oversight of the data from BMB/LC and L-4 until end of FY24.
- On-call assistance (as needed) to provide technical support to City staff on instrumentation at BMB/LC, L-4, or other locations as requested until September 30, 2024.
- Collection of wet weather grab samples at BMB and L-4 and coordination with the laboratory for water quality analysis.
- Guidance on collection of dry weather grab samples at BMB and L-4 by City staff and coordination with the laboratory for water quality analysis.
- Development of a technical report summarizing the results of the water quality data collection at BMB.

## Desktop User Interface View



## Source of Funds

### FY24 Budgeting

- Stormwater Engineering Department 54205509-03100 (Professional Services)

Staff recommends approval of the following:

- Continuation of the water monitoring implementation network in the amount of \$128,613.00

Questions?

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>
<b>Division</b>	ENGINEERING	<b>Account #</b>
<b>Subject:</b>	RESOLUTION 2023-XX AUTHORIZING THE CITY MANAGER TO SIGN HAZARD MITIGATION GRANT PROGRAM ASSISTANCE APPLICATIONS, AS REQUESTED BY THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT	
<b>Presenter:</b>	Maeven Rogers, Chief Sustainability & Resiliency Officer	
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Presentation</li> <li>2. Resolution</li> <li>3. Draft Application</li> </ol>	
<b>Background:</b>	<p><b>Council Priority:</b> <b>B. Safe and Reliable Services</b></p> <p>The Florida Division of Emergency Management announced the availability of resiliency funding under FEMA’s Hazard Mitigation Grant Program (HMGP) as a direct result of the Presidential Disaster Declaration for Hurricane Nicole.</p> <p>This funding helps communities implement measures to reduce or eliminate long-term risk to people and property from natural hazards and their effects.</p> <p>For Hurricane Nicole, Flagler County will receive an estimated \$2,411,145.67. The Local Mitigation Strategy (LMS) Working Group, a stakeholder group comprised of various regional officials, chooses multi-jurisdictional projects that promote resiliency and reduce hazards for designated HMGP funding. Three projects were scored as a part of the City of Palm Coast’s capital projects.</p> <p>The City of Palm Coast will pursue HMGP funding, a competitive grant process for all three projects. HMGP funds up to 75% of costs and requires a cost share of 25% from the City of Palm Coast.</p> <p>The following projects will be pursued for funding –</p> <ul style="list-style-type: none"> <li>• Stormwater Conveyance Improvements</li> <li>• PEP Panel Replacements Project #2</li> <li>• Palm Coast Wellfield Generators Project #2</li> </ul> <p>This item is to seek Council approval to allow the City Manager authorization to sign Hazard Mitigation Grant Program Assistance Applications, as requested by the State of Florida</p>	



Division of Emergency Management.

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX AUTHORIZING THE CITY MANAGER TO SIGN HAZARD MITIGATION GRANT PROGRAM ASSISTANCE APPLICATIONS, AS REQUESTED BY THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT**



# FEMA HAZARD MITIGATION GRANT PROGRAM (HMGP)

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## Hazard Mitigation Assistance Program and Policy Guide

Hazard Mitigation Grant Program, Hazard Mitigation Grant Program Post Fire, Building Resilient Infrastructure and Communities, and Flood Mitigation Assistance

March 23, 2023

Federal Enterprise Architecture (FEA) Number: FP-206-21-0001



## Background

### Projects:

- Stormwater Conveyance
- Wellfield Generators
- PEP Panel Replacements
- Flagler/Ian-\$2,411,145.67
- City of Palm Coast Application Submitted:
  - Tier 1 & Tier 2 Funding
  - City of Palm Coast Request: \$4,9000,000





# PALM COAST PEP Panel Replacements #2



**Total of 500 panels**

**Project Cost**

- \$400,000
- FEMA Share: \$300,000
- PC: \$100,000



## Locations: Total of 4

- Serves Water Treatment I

## Project Cost

- \$356,000
- FEMA Share: \$267,000
- PC: \$89,000



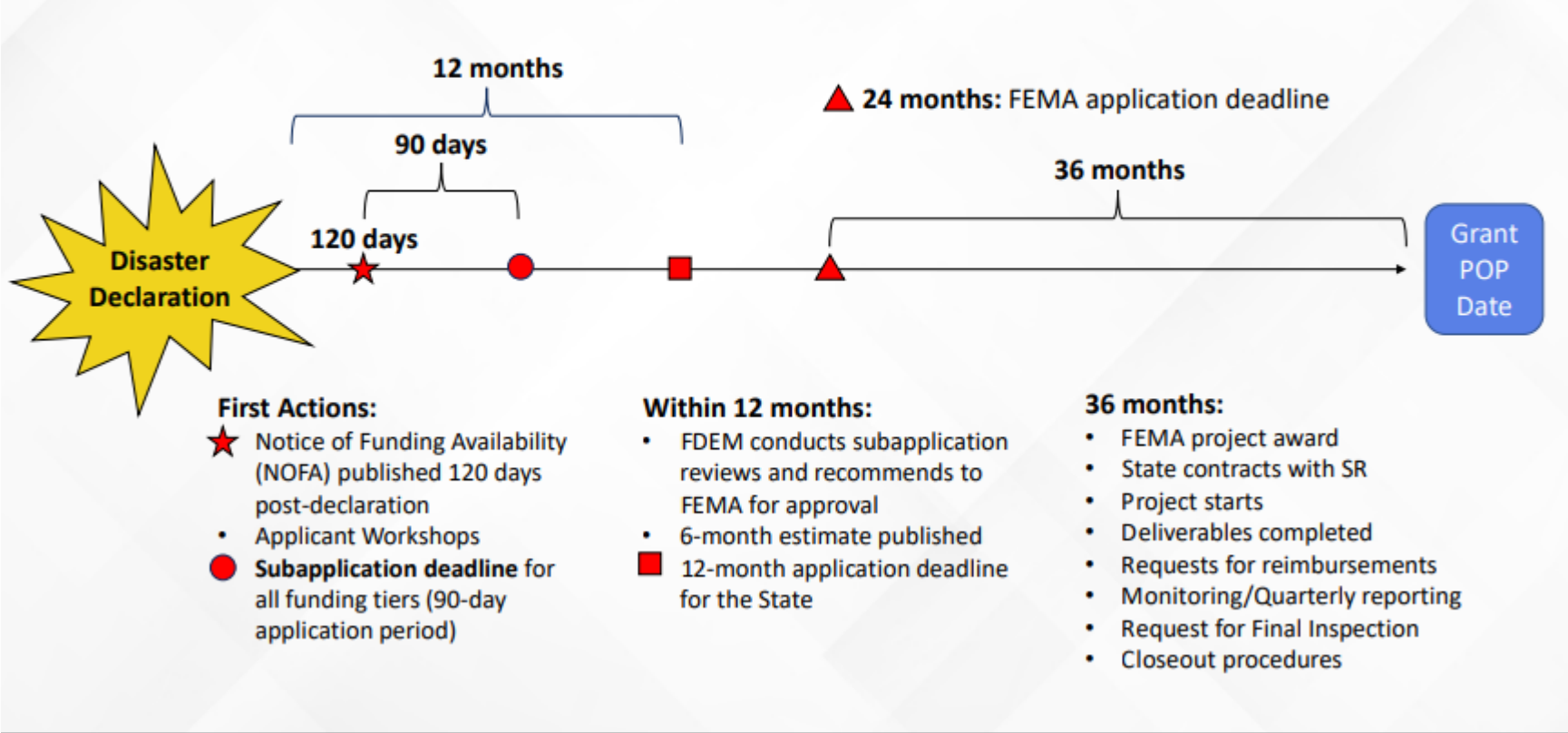
## Drainage Improvements at Colbert Lane

### Project Cost

- \$4,094,441
- FEMA Share: \$3,150,000
- PC: \$1,050,000



## HMGP Implementation Timeline



- Grant Deadline October 20<sup>th</sup>
- Announcement TBD

**RESOLUTION 2023 - \_\_\_\_\_**  
**HAZARD MITIGATION GRANT PROGRAM**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AUTHORIZING THE CITY MANAGER TO SIGN HAZARD MITIGATION GRANT PROGRAM ASSISTANCE APPLICATIONS AS REQUESTED BY THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT: PROVIDING AUTHORIZATION TO EXECUTE; PROVIDING FOR FUTURE AMENDMENTS; 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 Nicole 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 September 2023 which includes; Stormwater Conveyance Improvements, PEP Panel Replacements #2 & Palm Coast Wellfield Generators #2 , all determined to be critical improvements and facilities during emergency events; and

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. APPROVAL OF GRANT APPLICATIONS.** The City Council of the City of Palm Coast hereby approves the terms and conditions of Hazard Mitigation Grant Program (HMGP) assistance applications as required by the State of Florida Division of Emergency Management herein by references as Exhibit “A.”



**SECTION 3. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**SECTION 4. FUTURE AMENDMENTS.** The City Manager, or designee is hereby authorized to approve any future amendments or modifications to grant applications referenced in this resolution.

**SECTION 5. 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 6. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 7. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 8. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Draft Application

**THIS SECTION FOR STATE USE ONLY**

FEMA-\_\_\_\_-DR-FL

- Standard HMGP       5% Initiative Application       Application Complete  
 Initial Submission    or       Re- Submission

**Support Documents**

- Conforms w/ State 409 Plan  
 In Declared Area  
 Statewide

**Eligible Applicant**

- State or Local Government  
 Private Non-Profit (Tax ID Received)  
 Recognized Indian Tribe or Tribal Organization

**Project Type(s)**

- Wind  
 Flood  
 Other: \_\_\_\_\_

**Community NFIP Status:** (Check all that apply)

- Participating Community ID#: \_\_\_\_\_  
 In Good Standing     Non-Participating     CRS

**LMS Ranking:** \_\_\_\_\_

**County:** \_\_\_\_\_

**State Application ID:** \_\_\_\_\_

(TIME-DATE STAMP HERE)

This application is for all Federal Emergency Management Agency (FEMA Region IV) Hazard Mitigation Grant Program (HMGP) proposals. Please complete ALL sections and provide the documents requested. If you require technical assistance, please contact the Florida Division of Emergency Management at **DEM\_HazardMitigationGrantProgram@em.myflorida.com**.

**Section I – Applicant**

**A. Applicant Instruction:** Complete all sections that correspond with the type of proposed project

<u><b>Application Sections I-IV:</b></u>	<i>All Applicants must complete these sections</i>
<u><b>Environmental Review:</b></u>	<i>All Applicants must complete these sections</i>
<u><b>Maintenance Agreement:</b></u>	<i>Any Applications involving public property, public ownership, or management of property</i>
<u><b>Flood Control – Drainage Improvement Worksheet:</b></u>	<i>Acquisition, Elevation, Dry Flood proofing, Drainage Improvements, Flood Control Measures, Floodplain and Stream Restoration, and Flood Diversion – one worksheet per structure</i>
<u><b>Generator Worksheet:</b></u>	<i>Permanent, portable generators, and permanent emergency standby pumps</i>
<u><b>Tornado Safe Room Worksheet:</b></u>	<i>New Safe Room, Retrofit of existing structure, Community Safe Room, Residential Safe Room</i>
<u><b>Hurricane Safe Room Worksheet:</b></u>	<i>New Safe Room, Retrofit of existing structure</i>
<u><b>Wind Retrofit Worksheet:</b></u>	<i>Wind Retrofit projects only – one worksheet per structure</i>
<u><b>Wildfire Worksheet:</b></u>	<i>Defensible Space, Hazardous Fuels Reduction, Ignition Resistant Construction, other</i>
<u><b>Drought Worksheet:</b></u>	<i>Aquifers, other</i>
<u><b>Request for Public Assistance Form:</b></u>	<i>FEMA Form 90-49 (Request for Public Assistance): All applicants must complete, if applicable.</i>
<u><b>Acquisition Forms:</b></u>	<i>If project type is Acquisition, these forms must be completed. (Only one of the two Notice of Voluntary Interest forms is necessary.) Model Statement of Assurances for Property Acquisition Projects Declaration and Release Notice of Voluntary Interest (Town Hall Version) Notice of Voluntary Interest (Single Site Version) Statement of Voluntary Participation FEMA Model Deed Restriction Language</i>
<u><b>Application Completeness Guidance / Checklist :</b></u>	<i>All applicants are recommended to complete this checklist and utilize the guidance for completing the application.</i>

**B. Applicant Information:**

**FEMA-\_\_\_\_-DR-FL                      DISASTER NAME: \_\_\_\_\_**

**Title/Brief Descriptive Project Summary: \_\_\_\_\_**

1. Applicant (Organization): \_\_\_\_\_
2. Applicant Type:  State or Local Government  Native American Tribe  Private Non-Profit  Special District
3. County: \_\_\_\_\_
4. State Legislative Senate District(s): \_\_\_\_\_; State Legislative House District(s): \_\_\_\_\_ ;  
Congressional House District(s): \_\_\_\_\_ House
5. Federal Tax I.D. Number: \_\_\_\_\_
6. Data Universal Numbering System (DUNS): \_\_\_\_\_
7. Federal Information Processing Standards (FIPS) Code\*: \_\_\_\_\_ *(\*if your FIPS code is not known, see guidance)*
8. National Flood Insurance Program (NFIP) Community Identification Number: \_\_\_\_\_  
*(this number can be obtained from the FIRM map for your area)*
9. **Point of Contact:** (Person serving as the coordinator of project)

Ms.  Mr.    First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**10. Application Prepared by:**

Ms.  Mr.    First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**11. Authorized Applicant Agent (proof of authorization authority required)**

Ms.  Mr.    First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**12. Local Mitigation Strategy (LMS) Compliance**

- a. All proposed projects must be included in the county's Local Mitigation Strategy (LMS) Project List, and on file with FDEM's Mitigation Bureau Planning Unit. Does your jurisdiction have a current FEMA Approved Mitigation Plan and this project is listed?  Yes  No
- b. Attached is a letter of endorsement for this project from the county's LMS Coordinator.  Yes  No  
Ensure the LMS endorsement letter contains both the Total Estimated Projects Cost (Section IV. D.), along with the Estimated Federal Share (Section IV. E.1.) allocated to this project.
- c. The LMS project list and endorsement letter both have an estimated cost column and Federal Share amount that is within \$500.00 between the two  Yes  No

13. Has this project been submitted under a previous disaster event?  No  
 Yes, please provide the disaster number and project number (as applicable): \_\_\_\_\_

## Section II – Project Description

### A. Hazards to be Mitigated / Level of Protection

1. Select the type of hazards the proposed project will mitigate:  
 Flood    Wind    Storm surge    Wildfire    Other (*list*): \_\_\_\_\_
2. Identify the type of proposed project:  
 Elevation and retrofitting of residential or non-residential structure  
 Acquisition and Relocation       Acquisition and Demolition  
 Wind retrofit       Drainage project that reduces localized flooding  
 Generator       Other (please explain) \_\_\_\_\_
3. List the total number of persons that will be protected by the proposed project (*include immediate population affected by the project only*):  
\_\_\_\_\_
4. List how many acres of "Total Impacted Area" is to be protected by the proposed project (*include immediate area affected by the project only*):  
\_\_\_\_\_
5. Fill in the level of protection and the magnitude of event the proposed project will mitigate. (*e.g. 23 structures protected against the 100-year storm event (1% chance)*)  
\_\_\_\_\_ structure(s) protected against the \_\_\_\_\_ -year storm event (*10, 25, 50, 100, or 500 year storm event*)  
\_\_\_\_\_ structure(s) protected against \_\_\_\_\_ mile per hour (mph) winds
6. Check **all** item(s) the project may impact:  

<input type="checkbox"/> Wetlands	<input type="checkbox"/> Water Quality	<input type="checkbox"/> Previously Undisturbed Soil
<input type="checkbox"/> Floodplain	<input type="checkbox"/> Coastal Zone	<input type="checkbox"/> Toxic or Hazardous Substances
<input type="checkbox"/> Historic Resources	<input type="checkbox"/> Fisheries	<input type="checkbox"/> Threatened & Endangered Species
<input type="checkbox"/> Vegetation Removal	<input type="checkbox"/> Public Controversy	<input type="checkbox"/> Potential for Cumulative Impacts
<input type="checkbox"/> Health & Safety	<input type="checkbox"/> Other _____	
7. **Engineered projects:** *If your project has been already designed and engineering information is available, please attach to your application ALL calculations, H&H study and design plans (e.g. Drainage Improvement, Erosion Control, or other special project types).*  No  Yes If so, see Attachment #(s) \_\_\_\_\_.

### B. Project Description, Scope of Work, and Protection Provided (Must be Completed in Detail)

Describe, in detail, the existing problem, the proposed project, and the scope of work. Explain how the proposed project will **solve** the problem(s) and provide the level(s) of protection described in Part A. Also, if available, attach a vendor's estimate and/or a contractor's bid for the scope of work. **Please ensure that each proposed project is mitigation and not maintenance.**

1. Describe the existing problems:  
\_\_\_\_\_
2. Describe the type(s) of protection that the proposed project will provide:  
\_\_\_\_\_
3. Scope of Work (describe in detail what you are planning to do):  
\_\_\_\_\_
4. Describe any other on-going or proposed projects in the area that may impact, positively or negatively, the proposed HMGP Project:  
\_\_\_\_\_
5. Describe the purpose and need for the proposed project:  
\_\_\_\_\_

**Section III – Project Location** (Fully describe the location of the proposed project.)

**A. Site**

- Describe the physical location of this project, including street numbers (or neighborhoods) and project site zip code(s). Provide precise longitude and latitude coordinates for the site utilizing a hand-held global positioning system (GPS) unit or the equivalent:

Location: \_\_\_\_\_

Address(s): \_\_\_\_\_

GPS coordinates (decimal degree format): \_\_\_\_\_

Project Zip Code(s): \_\_\_\_\_

- Title Holder: \_\_\_\_\_
- Is the project site seaward of the Coastal Construction Control Line (CCCL)?  Yes  No
- Provide the number of each structure type (listed below) in the project area that will be affected by the project. Include **all** structures in project area.
 

<input type="checkbox"/> Residential property: _____	<input type="checkbox"/> Public buildings: _____
<input type="checkbox"/> Businesses/commercial property: _____	<input type="checkbox"/> Schools/hospitals/houses of worship: _____
<input type="checkbox"/> Other: _____	

**B. Flood Insurance Rate Map (FIRM) Showing Project Site**

<p>1. <input type="checkbox"/> Attach one (1) copy of the FIRM map, a copy of the panel information from the FIRM, and, if available, the Floodway Map. <b>FIRM maps are required for this application (if published for your area). Also, all attached maps must have the project site and structures clearly marked on the map.</b> FIRMs are typically available from your local floodplain administrator who may be located in a planning, zoning, or engineering office. Maps can also be ordered from the Map Service Center at 1-800-358-9616. For more information about FIRMs, contact your local agencies or visit the FIRM site on the FEMA Web-page at <a href="https://msc.fema.gov/portal">https://msc.fema.gov/portal</a>.</p>								
<p>2. Using the FIRM, determine the flood zone(s) of the project site (Check all zones in the project area) (See FIRM legend for flood zone explanations) (A Zone must be identified)</p> <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> VE or V 1-30</td> <td><input type="checkbox"/> AE or A 1-30</td> </tr> <tr> <td><input type="checkbox"/> AO or AH</td> <td><input type="checkbox"/> A (no base flood elevation given)</td> </tr> <tr> <td><input type="checkbox"/> B or X (shaded)</td> <td><input type="checkbox"/> C or X (unshaded)</td> </tr> <tr> <td><input type="checkbox"/> Floodway</td> <td><input type="checkbox"/></td> </tr> </table> <p><input type="checkbox"/> Coastal Barrier Resource Act (CBRA) Zone (Federal regulations strictly limit Federal funding for projects in this Zone; please coordinate with your state agency before submitting an application for a CBRA Zone project).</p>	<input type="checkbox"/> VE or V 1-30	<input type="checkbox"/> AE or A 1-30	<input type="checkbox"/> AO or AH	<input type="checkbox"/> A (no base flood elevation given)	<input type="checkbox"/> B or X (shaded)	<input type="checkbox"/> C or X (unshaded)	<input type="checkbox"/> Floodway	<input type="checkbox"/>
<input type="checkbox"/> VE or V 1-30	<input type="checkbox"/> AE or A 1-30							
<input type="checkbox"/> AO or AH	<input type="checkbox"/> A (no base flood elevation given)							
<input type="checkbox"/> B or X (shaded)	<input type="checkbox"/> C or X (unshaded)							
<input type="checkbox"/> Floodway	<input type="checkbox"/>							
<p>3. <input type="checkbox"/> <b>If the FIRM Map for your area is not published,</b> please attach a copy of the Flood Hazard Boundary Map (FHBM) for your area, with the project site and structures clearly marked on the map.</p>								
<p>4. <input type="checkbox"/> Attach a copy of a Special Flood Hazard Area Flood Insurance Assurance(s).</p>								

**C. City or County Map with Project Site and Photographs**

- Attach a copy of a city or county scale map (large enough to show the entire project area) with the project site and structures marked on the map.
- Attach a USGS 1:24,000 TOPO map with project site **clearly** marked on the map.
- For **acquisition** or **elevation** projects, include copy of Parcel Map (Tax Map, Property Identification Map, etc.) showing each property to be acquired or elevated. Include the Tax ID numbers for each parcel, and Parcel information – including year built and foundation.
- Attach photographs (at a minimum 4 photographs) for each project site per application. The photographs should be representative of the project area, including any relevant streams, creeks, rivers, etc. and drainage areas that affect the project site or will be affected by the project, and labeled. For each structure, please include the following angles: front, back and both sides.





## Section V. Environmental Review and Historic Preservation Compliance

**(NOTE: This application cannot be processed if this section is not completed.)**

Because the HMGP is a federally funded program, all projects are required to undergo an environmental and historic preservation review as part of the grant application process. Moreover, all projects must comply with the National Environmental Policy Act (NEPA) and associated Federal, State, Tribal, and Local statutes to obtain funding. **NO WORK can be done prior to the NEPA review process. If work is done on your proposed project before the NEPA review is completed, it will NOT be eligible for Federal funding.**

### A. The following information is required for the Environmental and Historic Preservation review:

*All projects must have adequate documentation to determine if the proposed project complies with NEPA and associated statutes. The State Environmental Staff provide comprehensive NEPA technical assistance for Applicants, with their consent, to complete the NEPA review. The type and quantity of NEPA documents required to make this determination varies depending upon the project's size, location, and complexity. However, at a minimum, please provide the applicable documentation from this section to facilitate the NEPA compliance process.*

1.  Detailed project description, scope of work, and budget/costs (Section II and Section IV of this application).
2.  Project area maps (Section III, part B & C of this application)
3.  Project area/structure photographs (Section III, part C of this application).
4.  Preliminary project plans.
5.  Project alternatives description and impacts (Section V of the application).
6.  Please complete the applicable project worksheets.  
Documentation showing dates of construction are required for all structures.
7.  Environmental Justice – Attach documents regarding evaluation (required) and satisfactory resolution (if necessary) of Environmental Justice issues (Highly Disproportionate, Adverse Impact (effects) on Minority or Low Income Population). Documents can include public meeting records, media reports letters from interested persons and groups, studies on population, ethnic groups, quality of life, housing, economics, transportation, public services, schools, public health, recreation, voting, etc.
8.  Provide any applicable information or documentation referenced on the *Information and Documentation Requirements by Project Type* below.

### B. Executive Order 12898; Environmental Justice for Low Income and Minority Population:

1. Are there low income or minority populations in the project area or adjacent to the project area?  
 No  Yes; please describe any disproportionate and adverse effects to these populations:  
\_\_\_\_\_
2. To help evaluate the impact of the project, please indicate below any other information you are providing.  
 Description of the population affected and the portion of the population that would be disproportionately and adversely affected. Please include specific efforts to address the adverse impacts in your proposal narrative and budget.  
\_\_\_\_\_
3.  Attached materials or additional comments: Please include pdf documentation from the US Census Quick Facts and American Factfinder's website of the project area (<http://www.census.gov/>).  
\_\_\_\_\_



**C. Tribal Consultation** *(Information Required)*

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effect of their undertakings on historic properties. The NHPA requires that agencies must complete this process prior to the expenditure of any Federal funds on the undertaking. A Tribal Consultation is required for any project disturbing ground or moving soil, including but not limited to: drainage projects; demolition; construction; elevation; communication towers; tree removal; utility improvements.

1. Describe the current and future use of the project location. A land use map may be provided in lieu of a written description.  
\_\_\_\_\_

2. Provide information on any known site work or historic uses for project location.  
\_\_\_\_\_

- Attach a copy of a city or county scale map (large enough to show the entire project area) with the horizontal limits (feet) and vertical depths (square feet) of all anticipated ground disturbance of 3 inches or more.

**D. Alternative Actions** *(Information Required)*

The NEPA process requires that at least two alternative actions be considered that address the same problem/issue as the proposed project. In this section, list **two feasible** alternative projects to mitigate the hazards faced in the project area. One alternative is the “No Action Alternative”.

**1. No Action Alternative**

Discuss the impacts on the project area if no action is taken.  
\_\_\_\_\_

**2. Other Feasible Alternative**

Describe a feasible alternative project that would be the next best solution if the primary alternative is not accomplished. This could be an entirely different mitigation method or a significant modification to the design of the current proposed project. Please include a Scope of Work, engineering details (if applicable), estimated budget and the impacts of this alternative. Complete *all* of parts **a-e** (below).

**a. Project Description for the Alternative**

Describe, in detail, the alternative project, and explain how the alternative project will solve the problem(s) and/or provide protection from the hazard(s). Also, provide pros and cons for this alternative and a reason for why it was not selected.  
\_\_\_\_\_

**b. Project Location of the Alternative** *(describe briefly, if different from proposed project)*  
\_\_\_\_\_

- Attach a map or diagram showing the alternative site in relation to the proposed project site *(if different from proposed project)*

**c. Scope of Work for Alternative Project**  
\_\_\_\_\_

**d. Impacts of Alternative Project**

Discuss the impact of this alternative on the project area. Include comments on these issues as appropriate: Environmental Justice, Endangered Species, Wetlands, Hydrology (Upstream and Downstream Surface Water Impacts), Floodplain/Floodway, Historic Preservation and Hazardous Materials.  
\_\_\_\_\_

**e. Estimated Budget/Costs for Alternative Project**

In this section, provide details of all the estimated costs of the alternative project (round figures to the nearest dollar). A lump sum budget is acceptable.

Materials:	
Labor:	
Fees:	
<b>Total Estimated Project Cost:</b>	<b>\$ 0.00</b>

**HMGP ENVIRONMENTAL REVIEW**  
**Information and Documentation Requirements by Project Type**

**Retrofits to Existing Facilities/Structures**

**Elevations**

**Acquisitions with Demolition**

- ✓ Dates of Construction
- ✓ Ground disturbance map for projects with 3 inches or more of ground disturbance
- ✓ Structure photographs

**Drainage Improvements**

- ✓ Engineering plans/drawings
- ✓ Permit or Exemption letter to address any modifications to water bodies and wetlands
  - o Department of Environmental Protection
  - o Water Management District
  - o U.S. Army Corps of Engineers
- ✓ Ground disturbance map for projects with 3 inches or more of ground disturbance.
- ✓ Concurrence from U.S. Fish and Wildlife addressing any impacts to wildlife, particularly endangered and threatened species and their habitats.
- ✓ If the project is in a coastal area, attach a letter from the National Marine Fisheries Service addressing impacts to marine resources.
- ✓ Concurrence from Natural Resource Conservation Service if project is located outside city limits and may impact prime or unique farmland.
- ✓ Concurrence from your Local Floodplain Manager – if project is located in a floodplain.

*Note: This is a general guideline for most projects. However, there will be exceptions. Consult with state environmental staff on project types not listed.*

## **Section VI – Maintenance Agreement**

**All applicants whose proposed project involves the retrofit or modification of existing public property or whose proposed project would result in the public ownership or management of property, structures, or facilities, must first sign the following agreement prior to submitting the application to FEMA.**

**(NOTE: Those applicants whose project only involves the retrofitting, elevation, or other modification to private property where the ownership will remain private after project completion DO NOT have to complete this form.)**

The \_\_\_\_\_ of \_\_\_\_\_, State of Florida, hereby agrees that if it receives any Federal aid as a result of the attached project application, it will accept responsibility, at its own expense if necessary, for the **routine** maintenance of any real property, structures, or facilities acquired or constructed as a result of such Federal aid. Routine maintenance shall include, but not be limited to, such responsibilities as keeping vacant land clear of debris, garbage, and vermin; keeping stream channels, culverts, and storm drains clear of obstructions and debris; and keeping detention ponds free of debris, trees, and woody growth.

The purpose of this agreement is to make clear the Sub-recipient's maintenance responsibilities following project award and to show the Sub-recipients acceptance of these responsibilities. It does not replace, supersede, or add to any other maintenance responsibilities imposed by Federal law or regulation and which are in force on the date of project award.

Signed by \_\_\_\_\_ the duly authorized representative  
(printed or typed name of signing official)

\_\_\_\_\_,  
(title)

This \_\_\_\_\_ (day) of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

**Signature\*** \_\_\_\_\_

**\*Please Note: The above signature must be by an individual with legal signing authority for the respective local government or county (e.g., the Chairperson, Board of County Commissioners or the County Manager, etc.)**

## HMGP Application Completeness Guidance/Checklist

This guidance/checklist contains an explanation, example and/or reference for information requested in the application. Please use this list to assure your application is complete and includes the required information for HMGP projects. The appropriate documentation must also be attached. It is important to note that this list is similar to the form that will be used during the application sufficiency review by the HMGP staff.

**Project Title:** \_\_\_\_\_

**Applicant:** \_\_\_\_\_

Application Information	Explanation of Information Required	✓
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### Section I

#### **B. Applicant Information**

<b>FEMA__-DR-FL</b>	Type in the four digit number FEMA assigned to the disaster that this application is being submitted under. (Example: 4337, 4283)	<input type="checkbox"/>
<b>DISASTER NAME</b>	Type in the Disaster name. (Example: Hurricane Irma, Tropical Storm Fay)	<input type="checkbox"/>
<b>Title/Brief Descriptive Project Summary</b>	The project title should include: 1) Name of Applicant, 2) Name of Project, 3) Type of Project. (Example: City of Tallahassee, City Hall Building, Wind Retrofit)	<input type="checkbox"/>
<b>1. Applicant</b>	Name of organization applying. Must be an eligible applicant.	<input type="checkbox"/>
<b>2. Applicant Type</b>	State or local government, recognized Native American tribe, or private non-profit organization. If private non-profit, please attach documentation showing legal status as a 501(C). (Example: IRS letter, Tax Exempt Certificate)	<input type="checkbox"/>
<b>3. County</b>	Indicate county in which the project is located.	<input type="checkbox"/>
<b>4. State Legislative and Congressional District(s)</b>	Specify the appropriate State Senate, House and Congressional District code for the project site. For multiple sites, please list codes for each site. <a href="http://www.myfloridahouse.gov/sections/representatives/myrepresentative.aspx">http://www.myfloridahouse.gov/sections/representatives/myrepresentative.aspx</a>	<input type="checkbox"/>
<b>5. Federal Tax I.D. Number</b>	List the Federal Employer's Identification Number (FEIN) number, also known as Federal Tax Identification number, 9-digit code. May be obtained from your finance/accounting department.	<input type="checkbox"/>
<b>6. DUNS Number</b>	Include Data Universal Numbering Standard (DUNS) number in appropriate location on application. If none, please refer to HMGP FAQ's in Application Reference Material for instructions on obtaining a DUNS number. <a href="http://www.usaspending.gov">www.usaspending.gov</a>	<input type="checkbox"/>
<b>7. FIPS Code</b>	List the Federal Information Processing Standard (FIPS) Code. May be obtained from your finance/accounting/grants department. If none, please submit FEMA Form 90-49.	<input type="checkbox"/>
<b>8. NFIP ID Number</b>	List the National Flood Insurance Program (NFIP) number. You must be a participating NFIP member to be eligible for HMGP funding. Please make sure that the number is the same as the panel number on the FIRM provided with the application.	<input type="checkbox"/>
<b>9. Point of Contact</b>	Please provide all pertinent information for the point of contact. This person serves as the coordinator of the project. If this information changes once the application is submitted, please contact the HMGP staff immediately.	<input type="checkbox"/>
<b>10. Application Prepared By</b>	Please provide the preparer information. May be different from the point of contact (line 9) and/or the applicant's agent (line 11).	<input type="checkbox"/>
<b>11. Authorized Applicant Agent</b>	An authorized agent must sign the application. <i>"An authorized agent is the chief elected official of a local government who has signature authority, so for a county it would be the Chairman of the Board of County Commissioners and for a municipality it would be the Mayor (the exact title sometimes varies). Any local government may delegate this authority to a subordinate official (like a City or County Manager) by resolution of the governing body (the Board of County Commissioners or Board of City Commissioners). If a local government delegates signature authority, a copy of the resolution by the governing body authorizing the signature authority for the individual signing must be provided."</i>	<input type="checkbox"/>
<b>12. LMS Compliance</b>	a) LMS Project List:	<input type="checkbox"/>

	<p>All proposed projects must be included in the county's Local Mitigation Strategy (LMS) Project List and must be on file with FDEM's Mitigation Bureau Planning Unit.</p> <p>b) LMS Endorsement Letter All proposed projects must include an endorsement letter from the county's Local Mitigation Strategy Coordinator. You may use 1 letter as long as it includes every proposed project.</p> <p>c) Estimated Costs &amp; Application Costs: The LMS Project List must include an Estimated Cost column and each HMGP project application must be within \$500.00 of that Project List's estimated cost. Also ensure that the Federal Cost Share indicated on the LMS Coordinator's Endorsement Letter exactly matches the Federal Cost Share indicated within the application. Ensure the LMS endorsement letter contains both the Total Estimated Projects Cost (Section IV. D.), along with the Estimated Federal Share (Section IV. E.1.) allocated to this project.</p> <p>A letter of endorsement for the project and its priority number from the Local Mitigation Strategy must be included. Refer to <b>Sample LMS Letter</b>. Applications without a letter of endorsement will not be processed. (44 CFR 201.6 Local Mitigation Plans)</p>	
13. Previous Submittal	If the project has been previously submitted under another disaster, provide the disaster number, the project number, and the title of the project.	<input type="checkbox"/>

**Section II - Project Description**

**A. Hazards to be Mitigated/Level of Protection**

1. Type of Hazards	<b>Type of Hazards the Proposed Project will Mitigate:</b> Identify the hazard(s) that the proposed project will mitigate. More than one hazard may be selected.	<input type="checkbox"/>
2. Identify the Type of Project	<b>Identify the Type of Proposed Project:</b> Describe the mitigation project being proposed. (Example: drainage, wind retrofit, generator etc.)	<input type="checkbox"/>
3. Number of Persons Protected	Explain how many people will be protected by or benefit from the proposed project. (Example: A drainage project improving a residential area of 23 homes, with an average household of 2 people = 46 people)	<input type="checkbox"/>
4. Total Impacted Area	Explain how many acres will be impacted from the proposed project: Drainage/Berm/Pond/Culverts/Flood hazard projects: combination of the area to be protected and ground disturbance must not exceed 25 acres.	
5. Level of Protection	Specify the level of protection and magnitude of the event the proposed project will mitigate. Attach support documentation that verifies the stated level of protection. (Example: In a wind retrofit project, it will be the design wind speed to comply with the Florida Building Code requirements. In a drainage project, it will be the implemented design level, e.g. a 25-year FDOT design standard for culvert.)	<input type="checkbox"/>
6. Project Impact	Identify <b>all</b> the items the project may impact or are within the project area.	<input type="checkbox"/>
7. Engineered Projects (e.g. Drainage)	Include available engineering calculations, studies, and designs for the proposed project showing results from applied Recurrence Interval scenarios before and after mitigation. (Number of structures, building replacement value, depth of the water, structural damages, content damages, displacement, road closures, etc.)	<input type="checkbox"/>

**B. Project Description, Scope of Work, and Protection Provided (Must be Completed in Detail)**

1. Existing Problem	Describe the existing problem, location, source of the hazard, and the history and extent of the damage. Include newspaper articles, insurance documentation, photographs, etc. If this project is eligible for PA (406) mitigation activities, please describe the 406 activities.	<input type="checkbox"/>
2. Type of Protection	Determine how the funding will solve the existing problem and provide protection.	<input type="checkbox"/>
3. Scope of Work:	<b>What the Project Proposes to Do:</b> Determine the work to be done. The scope of work must meet eligibility based on HMGP regulations and guidance. Explain how the proposed problem will be solved. (NOTE: The proposed project must be a mitigation action, not maintenance.) <i>Does the proposed project solve a problem independently or constitute a functional part of a solution where there is assurance that the project as a whole will be completed (44 CFR 206.434[c][4])? Does the proposed project address a problem that has been repetitive or that poses a</i>	<input type="checkbox"/>

	<i>significant risk to public health and safety if left unresolved (44 CFR 206.434[c][5][i])?</i> Projects that merely identify or analyze hazards or problems are not eligible. <b>See Sample Scope of Work Language</b> in HMGP Application Reference Material. Generators should not be included in the scope of work unless said generator only powers the mitigation element or is for a critical facility.	<input type="checkbox"/>
<b>4. On-Going or Proposed Projects in the Area</b>	Determine if other projects, zoning changes, etc. are planned (particularly in the same watershed if flooding is being addressed) that may negatively or positively impact the proposed project. If there is a drainage project or downstream issue elsewhere, it may eliminate the current flooding issue, erasing the need for the proposed project. Response applies to drainage and acquisition projects. N/A is appropriate in wind retrofit shutter projects only. If this project is also being considered under the Public Assistance Program (406), please describe in detail the 406 mitigation activities and/or services. Do not include project costs associated with the above referenced HMGP application.	<input type="checkbox"/>
<b>5. Purpose / Need</b>	Describe the purpose and need for the proposed project.	<input type="checkbox"/>

### **Section III - Project Location**

#### **A. Site**

<b>1. Physical Location</b>	List the physical location of the project site(s) including the street number(s), zip code(s) and GPS coordinates (latitude/longitude, in decimal degrees). The physical address must correspond with the address locations specified on maps submitted with the application.	<input type="checkbox"/>
<b>2. Title Holder</b>	Provide the titleholder's name.	<input type="checkbox"/>
<b>3. Project Seaward of the CCCL?</b>	Determine if the project site is located seaward of the Coastal Construction Control Line. <a href="https://floridadep.gov/water/coastal-construction-control-line">https://floridadep.gov/water/coastal-construction-control-line</a>	<input type="checkbox"/>
<b>4. Number and Types of Structures Affected</b>	Specify the number and type of properties affected by the project. (Example: Drainage project that affects 100 homes, 15 businesses and 2 schools.) What does the project protect? Should have a number next to the box that is checked. (See Section II, Item A.4 – detail of these totals)	<input type="checkbox"/>

#### **B. Flood Insurance Rate Map (FIRM) Showing Project Site**

<b>1. Copies of FIRM</b>	Attach a copy (or copies) of the FIRM and clearly identify the project site. The FIRM Panel number must be included. To obtain a FIRM map, go to <a href="https://msc.fema.gov/portal">https://msc.fema.gov/portal</a> . <b>See instructions on How to make a FIRMette.</b>	<input type="checkbox"/>
<b>2. Flood Zone Determination</b>	Specify the flood zone(s) of the project site(s). <b>If project is located in a Special Flood Hazard Area, proof of flood insurance will need to be provided. Amount of coverage must be equal to or greater than the amount of Federal mitigation funding obligated to the project.</b>	<input type="checkbox"/>
<b>3. Flood Hazard Boundary Map (FHBM)</b>	Not required if a copy of the FIRM is attached.	<input type="checkbox"/>

#### **C. City or County Map with Project Site and Photographs**

<b>1. City/County Map with Project Site</b>	The project site and staging location (if applicable) should be clearly marked on a legible City/County map. The map should be large enough to show the project site. More than one map may be required.	<input type="checkbox"/>
<b>2. USGS TOPO with Project Site</b>	The project site should be clearly marked on a legible USGS 1:24,000 TOPO map. To obtain a TOPO map, go to <a href="http://www.Digital-Topo-Maps.com">http://www.Digital-Topo-Maps.com</a>	<input type="checkbox"/>
<b>3. Parcel/Tax Map</b>	A Parcel, Tax or Property Identification map is required <u>only</u> for acquisition and elevation projects. The location of the structure must be clearly identified.	<input type="checkbox"/>
<b>4. Site Photographs</b>	At least four photographs are required that clearly identify the project site. The photos must be representative of the project area, including any relevant streams, creeks, rivers, etc., and drainage areas that affect the project site or will be affected by the project. The front, back and both side angles are required for each structure. For acquisition and elevation projects, a photo taken away from the structure (in front toward the street, and in back toward backyard) to show the area along with photographs of specific elements of the structure affected by the project (windows for shutters or window replacements) should also be provided. Please label photographs appropriately. In addition, CDs may be submitted.	<input type="checkbox"/>

### Section IV - Budget/Costs

Please make sure all calculations are correct. Provide a breakdown of materials, labor and fees paid for the proposed project. Support documentation must be attached, i.e. vendor's quote, professional estimate (from engineer, architect, local building official, etc.). The proposed budget line items should represent allowable costs associated with the scope of work. Contingency Cost should be included as a line item in the budget section, and justified. Recommended range is 1 to 5%. It is required to complete this section; it will be used for the Benefit-Cost Analysis (BCA). Costs should be accurate, complete and reasonable compared to industry standards. Make sure the total cost is correct on the entire application.

<b>A. Materials</b>	Describe the cost of materials. Provide breakdown.	<input type="checkbox"/>
<b>B. Labor</b>	Provide a breakdown of description, hours, rate, and cost or lump sum labor cost. Can use in-kind contribution as part of the 25% match. (Attach support documentation for in-kind match to detail wages and salaries charged for any in-kind contribution. No overtime wages can be used to satisfy in-kind match contributions).	<input type="checkbox"/>
<b>C. Fees Paid</b>	Provide a breakdown of associated fees i.e., consultants, studies, engineering, permits, and project management. Maintenance is not an allowable cost under HMGP. <i>Pre-award costs may be requested (See Pre-award Costs guidance).</i>	<input type="checkbox"/>
<b>D. Total Estimated Project Cost</b>	Please make sure all calculations are correct. This figure should be the same as the figure for total funding.	<input type="checkbox"/>

### E. Funding Sources (round figures to the nearest dollar)

The proposed sources of non-federal matching funds must meet eligibility requirements. (Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant.) 44 CFR 13.24 (b)(1).

<b>1. Estimated Federal Share</b>	The estimated Federal share is generally 75%. If the Federal share is not 75%, assure actual amount is entered. It could be 50.1234% or 35.1234%, etc. of the total dollar amount of project depending on county LMS allocation and priority. This figure cannot exceed 75%.	<input type="checkbox"/>
<b>2. Non-Federal Share</b>	May include all 3 sources, i.e. cash, in-kind and global match, as long as the total is a minimum of 25%. Match cannot be derived from a federal agency except Federal funds that lose their federal identity (e.g., CDBG funding and certain tribal funding).	<input type="checkbox"/>
<b>3. Cash</b>	Cash- Local funding will be utilized for the non-federal share. Enter amount of cash and percentage of total that amount represents.	<input type="checkbox"/>
<b>4. Total In-Kind</b>	May use materials, personnel, equipment, and supplies owned, controlled and operated from within governing jurisdiction as an in-kind match. <i>Third party in-kind contributions would be volunteer services, employee services from other organizations furnished free of charge, donated supplies, and loaned equipment or space. The value placed on these resources must be at a fair market value and must be documented. If in-kind is claimed from outside the applicant jurisdiction, it must be cash only. ** Identify proposed eligible activities in Section IV B. and C. as a separate line with In-kind written as a part of the description.</i>	<input type="checkbox"/>
<b>5. Total Project (Global) Match</b>	Project (global) match must 1) meet all the eligibility requirements of HMGP; and 2) begin after FEMA's approval of the match project. A separate HMGP application must be submitted for global match projects. Indicate which project(s) will be matched. <i>The global match is not required to be an identical project. Projects submitted as global match for another project must meet the same period of performance time constraints as the HMGP.</i>	<input type="checkbox"/>
<b>6. Other Agency Share</b>	Identify Non-Federal Agency and availability date; provide the documentation from the agency. (e.g., CDBG funding, and certain tribal funding)	<input type="checkbox"/>
<b>7. Total Funding</b>	Total must represent (100%) of the total estimated project cost. Ensure that percentages match corresponding cost-shares and the total matches the Budget (in Section IV. D. - Total Estimated Project Costs).	<input type="checkbox"/>

### F. Project Milestones/Schedule of Work

<b>1. Milestones (Schedule)</b>	Identify the major milestones in the proposed project and provide an estimated time-line (e.g. <i>Designing, Engineering – 3 months, Permitting – 6 months, Procurement – 30 days, Installation – 6 months, Contracting – 1 month, Delays, Project Implementation, Inspections, Closeout, etc.</i> See <b>Typical Project Milestones for estimated time-frames</b> ) for the critical activities not to exceed a period of 3 years for performance. Milestones should not be grouped together but listed individually. Please allot for the appropriate amount of time.	<input type="checkbox"/>
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**Section V - Environmental Review & Historic Preservation Compliance**

**A. No work can begin prior to the completion of the environmental (NEPA) review. In order for the Environmental staff to conduct the NEPA review, all sections listed below must be completed.**

1. <b>Description, SOW &amp; Budget</b>	Detailed Project Description, Scope of Work & Budget/Costs Complete Sections II & IV of the application.	<input type="checkbox"/>
2. <b>Area Maps</b>	Project area Maps - Attach a copy of the maps and clearly mark the project site, and place the specific project structure(s) on map(s). Complete Section III, part B & C of the application.	<input type="checkbox"/>
3. <b>Project Area/Structure Photographs</b>	Complete Section III part C of the application.	<input type="checkbox"/>
4. <b>Preliminary Project Plans</b>	For shutters see the scope of work and for drainage & elevation see engineering drawings.	<input type="checkbox"/>
5. <b>Project Alternatives</b>	Complete Section V part D. of this application.	<input type="checkbox"/>
6. <b>Project Worksheets</b>	Dates of construction are required for all structures. See worksheets.	<input type="checkbox"/>
7. <b>Documentation Requirements by Project Type</b>	Provide any of the required documentation as listed on page 10 in the Information and Documentation Requirements by Project Type that may have already been obtained.	<input type="checkbox"/>
8. <b>Information/ Documentation Requirements by Project Type</b>	Provide any applicable information or documentation.	<input type="checkbox"/>

**B. Executive Order 12898, Environmental Justice for Low Income and Minority Population**

1. <b>Documentation of Environmental Justice</b>	Determine the proportion of the population, in either the project zip code or city, characterized as having a minority background, and proportion of the population living below poverty level. Go to <a href="http://www.census.gov/">http://www.census.gov/</a> . If yes, complete Section V, part B.	<input type="checkbox"/>
2. <b>Population Affected</b>	List / describe the population affected by this project and the portion of the population adversely impacted. List the attached documentation.	<input type="checkbox"/>
3. <b>Attached Materials</b>	Attach all backup documentation to this application – Include a table of contents that outlines the information you are providing DEM	<input type="checkbox"/>

**C. Information required for Tribal Consultation**

1. <b>Documentation for Tribal Consultation</b>	For all projects with any ground disturbing activities of 3 inches or more, complete Section V part C.	<input type="checkbox"/>
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**D. Alternative Actions**

1. <b>No Action Alternative</b>	Please discuss the impacts on the project area if no action is taken.	<input type="checkbox"/>
2. <b>Other Feasible Alternative Action</b>	It is a FEMA and FDEM requirement for any Application Review. A narrative discussion of at least three project alternatives (from No Action to the most effective, practical solution) and their impacts, both beneficial and detrimental is required. It is expected that the jurisdiction has completed sufficient analysis to determine the proposed project can be constructed as submitted and it supports the goals and objectives of the FEMA approved hazard mitigation plan. Has the proposed project been determined to be the most practical, effective and environmentally sound alternative after consideration of a range of options? (44 CFR 206.434[c][5][iii])	<input type="checkbox"/>
a. <b>Project Description</b>	It is very important and a requirement that an Alternative project is submitted. NEPA requires that at least three alternatives must be presented to mitigate the problem. In addition to the proposed action and no action, one other <b>feasible</b> alternative must be provided.	<input type="checkbox"/>
b. <b>Project Location of the Alternative</b>	Describe the surrounding environment. Include information regarding both natural (i.e., fish, wildlife, streams, soils, plant life) and built (i.e., public services, utilities, land/shoreline use, population density) environments.	
c. <b>Scope of Work – Alternative Project</b>	Describe how the alternative project will solve the problem and provide protection from the hazard. Provide enough detail to describe the project for the evaluation panel to decide the best course of action for the state. Include any appropriate	

	diagrams, sketch maps, amount of materials and equipment, dimensions of project, amount of time required to complete, etc.	
<b>d. Impacts of the Alternative Project</b>		
<b>e. Estimated Budget/Costs for the Alternative Project</b>	Total cost is required.	<input type="checkbox"/>
<b>Materials, Labor, and Fees Paid</b>	The details line items are not required. Just enter a total amount.	<input type="checkbox"/>
<b>Total Estimated Project Costs</b>	Total cost is required. Vendor quote is not required. A lump sum budget may be submitted as justification to why this alternative was not chosen.	<input type="checkbox"/>

### Section VI – Maintenance Agreement

<b>1. Maintenance Agreement</b>	Please complete, sign and date the maintenance agreement. The maintenance agreement must be signed by an individual with signature authority, preferably the authorized agent.	<input type="checkbox"/>
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### Other Required Documentation

<b>1. MAPS</b>	All maps must be included with the application.	
<b>2. FFATA Form</b>	During contracting with the state, please complete, sign and date the FFATA Project File Form. Instructions are provided for your convenience in the document provided. <b>This is not required at the time of application submittal.</b>	<input type="checkbox"/>
<b>3. SFHA Acknowledgement of Conditions</b>	Required for all projects in the Special Flood Hazard Area. Read and sign the SFHA Acknowledgement of Conditions document. This form must be notarized, signed by the local jurisdiction and the property owner.	<input type="checkbox"/>
<b>4. Pre-award Cost Form</b>	If pre-award costs are being requested with your project, please be sure to identify all pre-award costs in the application budget per instructions. The pre-award cost form must be completed and submitted with your application.	<input type="checkbox"/>
<b>5. Request for Public Assistance Form</b>	Applicable if no FIPS number is assigned to applicant/recipient.	<input type="checkbox"/>
<b>6. Model Statement of Assurances for Property Acquisition Projects</b>	For Acquisition projects only.	<input type="checkbox"/>
<b>7. Declaration and Release</b>	For Acquisition projects only. Must be signed by all persons whose names are on the property deed.	<input type="checkbox"/>
<b>8. Notice of Voluntary Interest</b>	For Acquisition projects only. Two forms are included for your convenience. Please use the form that is most appropriate to your situation. Must be signed by all persons whose names are on the property deed.	<input type="checkbox"/>
<b>9. Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space</b>	For Acquisition projects only. Must be signed by all persons whose names are on the property deed.	<input type="checkbox"/>
<b>10. Worksheets</b>	The appropriate worksheet(s) must be completed and submitted with the application. <ul style="list-style-type: none"> <li>a. Flood Control – Drainage Improvement</li> <li>b. Generator</li> <li>c. Tornado Safe Room</li> <li>d. Hurricane Safe Room</li> <li>e. Wind Retrofit</li> <li>f. Wildfire</li> <li>g. Drought</li> </ul>	<input type="checkbox"/>

\*Submit **1 original (signed) and 2 full copies** of the entire application and backup documentation. Include a full copy of the submittal and all documentation on CD.

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> PARKS & RECREATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> RESOLUTION 2023-XX - AMENDING THE SPECIAL EVENT FEE SCHEDULE	
<b>Presenter:</b> Brittany McDermott, Deputy Director of Parks & Recreation and Jared Dawson, Recreation Coordinator	
<b>Attachments:</b> <ol style="list-style-type: none"><li>1. Presentation</li><li>2. Resolution</li><li>3. Exhibit A - Special Event Fee Schedule</li></ol>	
<b>Background:</b>  <b>Strategic Action Plan Pillars of Priorities:</b> <b>Strong Resilient Economy: Maintaining financial strengths within the City and promote fiscal responsibility to ensure future stability.</b>  <b><u>UPDATED BACKGROUND FROM THE SEPTEMBER 12, 2023, WORKSHOP MEETING:</u></b> City Council received a presentation on this item at their September 12, 2023, Workshop Meeting. No changes have been made to the item.  <b><u>ORIGINAL BACKGROUND FROM THE SEPTEMBER 12, 2023, WORKSHOP MEETING:</u></b> On February 2, 2010, City Council adopted the Special Event Fee Structure through Resolution 2010-12. The primary objective of this structure was to authorize the imposition of fees that would cover various expenses, including permit fees facility usage, and the provision of equipment and services by the City.  Currently, City Staff has recognized the need to assess the current fee schedule in order to maintain a sustainable level of cost recovery. This resolution aligns with City Council's principal priority of fostering a "Strong Resilient Economy." By conscientiously upholding fiscal responsibility, the City ensures enduring stability for all its residents.	
<b>Recommended Action:</b> <b>ADOPT RESOLUTION 2023-XX AMENDING THE SPECIAL EVENT FEE SCHEDULE</b>	

**RESOLUTION 2023 - \_\_\_\_\_**  
**AMENDING RESOLUTION 2010-12**  
**SPECIAL EVENT FEE SCHEDULE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PALM COAST, FLORIDA AMENDING RESOLUTION 2010-12  
RELATING TO THE CITY OF PALM COAST SPECIAL  
EVENTS FEE SCHEDULE; PROVIDING FOR SEVERABILITY,  
CONFLICTS, IMPLEMENTING ACTIONS, AND AN  
EFFECTIVE DATE**

**WHEREAS**, the City of Palm Coast finds that it is necessary to impose fees for the administrative costs, plan review, inspections, equipment usage, and all other activities associated with permitting a special event; and

**WHEREAS**, the City Council of the City of Palm Coast, Florida, desires to continue to collect Special Event Fees to recover costs for special event review and permitting activities and equipment usage; and

**WHEREAS**, the City reviewed the fee structure and recommends updating Special Event Fee Schedule as set forth in Special Event Ordinance 2010-01, Section 15(b), to reflect cost increases; and

**WHEREAS**, the City Council of the City of Palm Coast, desires to authorize the City Manager, or designee, to review the Special Event Fee Schedule each year and administer a Consumer Price Index (“CPI”) adjustment of up to a 3% if the City Manager or designee, determines that increase in fees is necessary based on the cost increase to the City for equipment and services related to special events; and

**WHEREAS**, the City Council finds it necessary that the Special Event Fee Schedule come before the City Council, every five years for review and approval.

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

**SECTION 1. LEGISLATIVE FINDINGS AND INTENT.** The City Council of the City of Palm Coast hereby Ratifies and affirms the provisions of Ordinance Number \_ and adopts the recitals to this resolution (whereas clauses) as legislative findings.

**SECTION 2. FEES** The City Council of the City of Palm Coast hereby approves the amended Special Event fees schedule as attached hereto and incorporated herein by reference as in Exhibit “A”. The City Manager, or designee, is authorized to review the Special Event Fee Schedule each year and administer a Consumer Price Index (“CPI”) adjustment of up to a 3% if the City Manager or designee, determines that increase in fees is necessary based on the cost increase to the City for equipment and services related to special events. The City Manager and City Staff will bring the Special Event Fee Schedule to the City Council every five years, or earlier if determined necessary by the City Manager, for review and approval.

**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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Special Event Fee Schedule

**EVENT FEE SCHEDULE (Exhibit A)**  
**As set by Resolution 2023-XX\***

<b>SECTION I</b>	<b>PERMIT</b>	<b>FEE</b>
a.	Special Event Permit	\$200.00
b.	Temporary Vendors Permit (Non- resident with no current City of Palm Coast Local Business Tax Receipt)	\$25.00 per event

<b>SECTION II</b>	<b>PUBLIC WORKS</b>	<b>FEE</b>
a.	Road Closure (Includes cones, barricades, etc)	\$250.00
b.	Traffic Message Board	\$50.00 each per day + 4-hour set-up/break-down
c.	Event Directional Signage	\$25.00 each per event
d.	Recycle Bins (City Bins) (Deposit)	Deposit \$50 \$5/ per container per day includes bags
e.	Portable Light Stands	\$70.00 each per event + 4-hour set-up/break-down
f.	PW Labor Charge (Minimum 4 Hrs.) PM Labor Charge (Minimum 2 Hrs.)	\$30.00/Hr./ Person
g.	Event Signage (Central Park only include labor)	\$50.00 per event
h.	Electric Service	\$50.00 per day

<b>SECTION III</b>	<b>SECURITY/ SAFETY</b>	<b>FEE</b>
a.	MERV Unit (Medical Emergency Response Vehicle)	\$50.00/ Hr.
b.	Engine Company	\$100.00/ Hr.

Other applicable fees may apply, such as park rental fee, after-hours inspections, etc.

<b>FEE TYPE</b>	<b>FEE DEADLINE</b>
Business Tax Office Vendor Applications	30 business days before event date
Special Event Permit	14 business days before event date
Park Rental Fee	14 business days before event date
Required Insurance	14 business days before event date

\*As per resolution 2023-XX, the City Manager, or designee, is authorized to review the Special Event Fee Schedule each year and administer a Consumer Price Index (“CPI”) adjustment of up to a 3% if the City Manager or designee, determines that increase in fees is necessary based on the cost increase to the City for equipment and services related to special events.

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	CONSTRUCTION MANAGEMENT & ENGINEERING	<b>Amount</b>
<b>Division</b>	ENGINEERING	<b>Account #</b>
<b>Subject:</b>	RESOLUTION 2023 – XX ESTABLISHING THE FEE STRUCTURE FOR CHARGEPOINT ELECTRIC VEHICLE CHARGER AND PROVIDING THE CITY MANAGER WITH THE AUTHORITY TO MAKE ADJUSTMENTS AS NECESSARY	
<b>Presenter:</b>	Maeven Rogers, Chief Sustainability & Resiliency Officer	
<b>Attachments:</b>	1. Resolution	
<p><b><u>UPDATED BACKGROUND FROM SEPTEMBER 12, 2023, WORKSHOP:</u></b>            This item is to establish the fee structure for ChargePoint electric vehicle (EV) chargers and to provide the City manager with the authority to make adjustments as necessary.</p> <p><b>ChargePoint Charger Fee Structure</b>            The following fee structure is hereby established for the operation of ChargePoint Electric Vehicle (EV) chargers within the City of Palm Coast:</p> <ul style="list-style-type: none"> <li>• <b>Usage Fee:</b> \$0.18 per kilowatt-hour (kWh)</li> <li>• <b>Initial Charge:</b> \$0.50 per charging session</li> <li>• <b>Idling Fees:</b> After a full charge users will be given 30 minutes to return to their vehicle. If the vehicle is plugged in after the 30-minute time window a \$5 per hour fee will be instated until vehicle is taken off the charger.</li> </ul> <p><b><u>ORIGINAL BACKGROUND FROM THE SEPTEMBER 12, 2023 WORKSHOP</u></b>  <b>Council Priority:</b>  <b>D. Sustainability Environment and Infrastructure</b>  <b>1. Collaborate with FPL and community partners to provide electric vehicles fast charging stations across multiple locations in the City.</b>  <b>a. Explore ways to add revenues for street improvements/enterprise fund through user fees for EV charging stations.</b></p> <p>Presentation on the current EV market and update on various fee structures for our two EV Level II dual chargers, one at City Hall and a future charger at our Southern Recreation Facility.</p>		
<p><b>Recommended Action:</b>  <b>ADOPT RESOLUTION 2023-XX ESTABLISHING THE FEE STRUCTURE FOR CHARGEPOINT ELECTRIC VEHICLE CHARGER AND PROVIDING THE CITY MANAGER WITH AUTHORITY TO MAKE ADJUSTMENTS AS NECESSARY</b></p>		

**RESOLUTION 2023-\_\_\_\_**  
**CHARGEPOINT FEE STRUCTURE**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, ESTABLISHING THE FEE STRUCTURE FOR CHARGEPOINT ELECTRIC VEHICLE CHARGERS LOCATED ON CITY PROPERTY AND PROVIDING CITY MANAGER AUTHORITY TO MAKE FEE ADJUSTMENTS AS NECESSARY; PROVIDING FOR SEVERABILITY, CONFLICTS, IMPLEMENTING ACTIONS AND AN EFFECTIVE DATE**

**WHEREAS**, the City recognizes the need to establish a fee structure for use of ChargePoint EV chargers (“Chargers”) located on City property to cover the City’s operational and maintenance costs while ensuring affordability and competitiveness; and

**WHEREAS**, the City Manager is responsible for overseeing the operation and maintenance the Chargers within the City; and

**WHEREAS**, the City Council of the City of Palm Coast, Florida finds it necessary to grant the City Manager the authority to make Charger fee adjustments based on factors such as usage, electric rates, maintenance costs, and other associated expenses to ensure the City continues to cover its costs and the long-term viability of the EV charging program.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF FEE STRUCTURE.** The City Council of the City of Palm Coast hereby adopts the following fee structure for the operation of ChargePoint Electric Vehicle (EV) Chargers within the City of Palm Coast:

- **Usage Fee:** \$0.18 per kilowatt-hour (kWh)
- **Initial Charge:** \$0.50 per charging session
- **Idling Fees:** After a full charge is completed, users will have 30 minutes to return to their vehicle and remove it from the Charger. If the vehicle is plugged in after the 30-minute time window a \$5 per hour fee will be charged until vehicle is taken off the Charger.



**SECTION 3. CITY MANAGER’S AUTHORITY FOR FEE ADJUSTMENTS.**

The City Manager is granted the authority to make adjustments to the fee structure established in Section 2 of this Resolution as necessary to ensure the sustainable operation and maintenance of the Chargers. The City Manager shall consider the following factors when making fee adjustments:

- a. **Usage and Demand:** The City Manager may modify the fees to align with patterns of usage and demand for EV charging services within the City. This may involve introducing tiered pricing or variable rates based on peak and off-peak hours.
- b. **Electric Rates:** In response to changes in electric rates set by utility providers, the City Manager may adjust the fee structure to ensure that the fees remain competitive and in line with actual electricity costs incurred.
- c. **Maintenance and Operating Costs:** To cover ongoing maintenance, repairs, and operational expenses associated with ChargePoint EV chargers, the City Manager may periodically assess and amend the fees.
- d. **Other Associated Costs and Fees:** Any additional costs or fees incurred by the City in providing ChargePoint EV charging services, including regulatory compliance, infrastructure upgrades, or administrative expenses, will be taken into account when considering fee adjustments.

**SECTION 4. INTENT OF FEE ADJUSTMENT.** The intent of the foregoing fee adjustment option is to maintain a balance between providing accessible EV charging services for the City of Palm Coast and ensuring the financial sustainability of the EV charging program. The City Manager will exercise judgment in making fee adjustments, with the primary goal of offsetting costs related to the operation and maintenance of the Chargers.

**SECTION 5. 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 6. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 7. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 8. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	WATER AND WASTEWATER UTILITY	<b>Amount</b>	\$317,295.00 Primary \$53,688.00 Alternate
<b>Division</b>		<b>Account #</b>	Multiple Accounts
<b>Subject:</b> RESOLUTION 2023-XX APPROVING MASTER SERVICE AGREEMENT WITH MULTIPLE FIRMS FOR LANDSCAPE MAINTENANCE SERVICES			
<b>Presenter:</b> Danny Ashburn, Utility Systems Manager			
<b>Attachments:</b>			
<ol style="list-style-type: none"> <li>1. Resolution</li> <li>2. Intent to Award (2)</li> <li>3. Project Bid Overview</li> <li>4. Draft Contracts (2)</li> </ol>			
<b>Background:</b>			
<b>Council Priority:</b>			
<b>D. Sustainable Environment &amp; Infrastructure</b>			
<p>The City Utility Department requires landscape maintenance services for all Water and Wastewater Treatment Plants, Effluent Disposal Sites, Wastewater Collection Pumping Stations, Well Sites, Elevated Tanks, and the Utility Main Office. Previously this service was performed by the City Public Works Department. An analysis was performed by Public Works staff, and it was determined that contracting this work out was more cost-efficient.</p> <p>In accordance with the City’s Purchasing Policy, City staff advertised and solicited bids for Utility Landscape Maintenance Services. The City received five (5) bids for the primary scope of work and three (3) bids for the alternate scope of work. All the bids received were determined to be responsive and responsible. The project bid overview and notice of intent to award are attached.</p> <p>Staff recommends City Council approving master service agreements with VerdeGo, LLC, for the primary scope of work, and Lawn Enforcement for the alternate scope.</p> <p>The annual contract amount for these services is <u>\$370,983.00</u>. The Fiscal Year 2024 Utility Budget includes \$370,983.00 to purchase these services.</p>			

**SOURCE OF FUNDS WORKSHEET FY 2023-24**

Utility Admin - Other Contractual Services Fund 54019000-034000	\$38,500.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$19,295.00</u>
<b>Balance</b>	<b>\$19,205.00</b>
Wastewater Collection-Other Contractual Services Fund 54019082-034000	\$425,000.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$90,000.00</u>
<b>Balance</b>	<b>\$335,000.00</b>
WWTP 1 - Other Contractual Services Fund 54019083-034000	\$605,988.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$103,688.00</u>
<b>Balance</b>	<b>\$502,300.00</b>
WWTP 2 - Other Contractual Services Fund 54019084-034000	\$221,300.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$180,000.00</u>
<b>Balance</b>	<b>\$203,300.00</b>
WTP 3 - Other Contractual Services Fund 54019085-034000	\$176,554.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$50,000.00</u>
<b>Balance</b>	<b>\$126,554.00</b>
WTP 1 - Other Contractual Services Fund 54019086-034000	\$1,067,770.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$45,000.00</u>
<b>Balance</b>	<b>\$1,022,770.00</b>
WTP 2 - Other Contractual Services Fund 54019087-034000	\$413,115.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$45,000.00</u>
<b>Balance</b>	<b>\$368,115.00</b>

**Recommended Action:****ADOPT RESOLUTION 2023-XX APPROVING MASTER SERVICE AGREEMENT WITH MULTIPLE FIRMS FOR LANDSCAPE MAINTENANCE SERVICES**

**RESOLUTION 2023-\_\_\_\_**  
**UTILITY LANDSCAPE AND GROUNDS MAINTENANCE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF A MASTER SERVICES AGREEMENT WITH VERDEGO, LLC AND LAWN ENFORCEMENT FOR UTILITY LANDSCAPE AND GROUNDS MAINTENANCE; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE AND EXECUTE THE AGREEMENTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, VerdeGo, LLC and Lawn Enforcement, desires to contract with the City of Palm Coast for Utility Landscape and Grounds Maintenance; and

**WHEREAS**, the City Council of the City of Palm Coast desires to contract with VerdeGo, LLC and Lawn Enforcement, for the above-referenced services.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF AGREEMENTS.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a Master Services Agreement with VerdeGo, LLC and Lawn Enforcement, for Utility Landscape and Grounds Maintenance.

**SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.** The City Manager, or designee, is hereby authorized to negotiate, finalize, and execute any necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - MSA VerdeGo, LLC and MSA Lawn Enforcement



# City of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-UT-23-55 - UTILITY LANDSCAPE AND GROUNDS MAINTENANCE

**Date:** 8/8/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 8/11/2023

Firm	Bid (Annualized)
<b>VerdeGo, LLC</b> Bunnell, FL	<b>\$317,295.00 Primary</b> \$96,250.00 Alternate
<b>Lawn Enforcement</b> Gainesville, FL	\$357,564.00 Primary <b>\$53,688.00 Alternate</b>
Yellowstone Landscape Bunnell, FL	\$361,256.00 Primary <b>No Bid - Alternate</b>
Fox Landscape, Inc. Bunnell, FL	\$406,880.04 Primary <b>No Bid - Alternate</b>
Feagin Lawn Maintenance, LLC Palatka, FL	\$874,980.00 Primary \$120,000 Alternate

The intent of the City of Palm Coast is to award ITB-UT-23-55 to VerdeGo, LLC for the PRIMARY BID SCOPE and Lawn Enforcement for the ALTERNATE BID SCOPE.



Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [jkscott@palmcoastgov.com](mailto:jkscott@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*





# ITB-UT-23-55 - UTILITY LANDSCAPE AND GROUNDS MAINTENANCE

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	ITB-UT-23-55
<b>Project Name</b>	UTILITY LANDSCAPE AND GROUNDS MAINTENANCE
<b>Project Owner</b>	Jesse Scott
<b>Project Type</b>	ITB
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	This Invitation to Bid is issued for the purpose of securing bids for the Utility Landscape and Grounds Maintenance Services at numerous sites throughout the community. There will be a MANDATORY Site Visit required and only those vendors who attend the Mandatory Site Visit will be allowed to submit bids. The resulting contract will be for three (3) years with two (2) each one (1) year renewals, upon mutual agreement.
<b>Open Date</b>	Jul 19, 2023, 8:00 AM EDT
<b>Intent to Bid Due</b>	Aug 02, 2023, 2:00 PM EDT
<b>Close Date</b>	Aug 03, 2023, 2:00 PM EDT



Awarded Suppliers	Reason	Score
Lawn Enforcement	Alternate Bid Only	188.74 pts
VerdeGo LLC	Primary Bid Only	155.78 pts

## Seal status

Requested Information	Unsealed on	Unsealed by
Price Schedule	Aug 03, 2023, 2:11 PM EDT	Jesse Scott
References	Aug 03, 2023, 2:11 PM EDT	Jesse Scott
Forms 1 - 5	Aug 03, 2023, 2:11 PM EDT	Jesse Scott
Signed and Dated Addendum 1	Aug 03, 2023, 2:11 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	Aug 03, 2023, 3:18 PM EDT	No
Ryan Bellerive	Aug 04, 2023, 9:52 AM EDT	No
Jesse Scott	Aug 03, 2023, 2:12 PM EDT	No
James Melley	Aug 03, 2023 2:53 PM EDT	No



## Project Criteria

Criteria	Points	Description
Admin Review	Pass/Fail	Documents completed and submitted as requested and required.
Admin Price Review - Primary Bid	100 pts	Direct bid Entry
Admin Price Review - Alternate Bid	100 pts	Direct bid Entry
Technical Review	Pass/Fail	MUST verify references and check all technical aspects of submission.
Technical Price Review	Pass/Fail	Are prices reasonable, given common knowledge of current market conditions? If yes, then PASS if no, then FAIL.
<b>Total</b>	<b>200 pts</b>	



# Scoring Summary

## Active Submissions

	Total	Admin Review	Admin Price Review - Primary Bid	Admin Price Review - Alternate Bid	Technical Review
Supplier	/ 200 pts	Pass/Fail	/ 100 pts	/ 100 pts	Pass/Fail
Lawn Enforcement	188.74 pts	Pass	88.74 pts (\$357,564.00)	100 pts <b>(\$53,688.00)</b>	Pass
VerdeGo LLC	155.78 pts	Pass	100 pts <b>(\$317,295.00)</b>	55.78 pts (\$96,250.00)	Pass
Yellowstone Landscape	93.2 pts	Pass	87.83 pts (\$361,256.00)	5.369 pts (\$999,999.00)	Pass
Fox Landscape, Inc.	83.35 pts	Pass	77.98 pts (\$406,880.04)	5.369 pts (\$999,999.00)	Pass
Feagin Lawn Maintenance LLC	81 pts	Pass	36.26 pts (\$874,980.00)	44.74 pts (\$120,000.00)	Pass



	<b>Technical Price Review</b>
<b>Supplier</b>	<b>Pass/Fail</b>
Lawn Enforcement	Pass
VerdeGo LLC	Pass
Yellowstone Landscape	Pass
Fox Landscape, Inc.	Pass
Feagin Lawn Maintenance LLC	Pass

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), between LAWN ENFORCEMENT AGENCY, INC., whose primary place of business is 4802 Southwest 85<sup>th</sup> Avenue, Gainesville, Florida 32607 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

### WITNESSETH:

**WHEREAS**, CITY desires to procure **Utility Landscape and Grounds Maintenance Services** from a competent and qualified supplier and has conducted a formal Invitation to Bid # ITB-UT-23-55 (ITB) requesting bids/quotes for the services; and

**WHEREAS**, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the ITB and desires to render said services to CITY at the firm prices established herein and in accordance with the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

#### 1. SUPPLY OF SERVICES:

- A. Work Order/Services.** This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.
- B. Quality of Services.** SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature
- C. Schedule/Delivery.** Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

## **2. COMPENSATION:**

- A. Costs and Expenses.** Pricing for the performance of Services as specifically set forth in any Work Order issued hereunder shall be in accordance with the rates, fees and discounts set forth in Exhibit C, Price Schedule. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly



attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com).
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

### **3. TERM AND TERMINATION:**

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of three (3) years. Following the initial term and at the sole option of CITY, this Agreement may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
  - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
  - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
    - 1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
    - 2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
    - 3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
    - 4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.

iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.

**C. Termination By SUPPLIER.** SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.

**D. Cooperation.** Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.

**E. Survivability.** The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES.**

##### **A. SUPPLIER represents and warrants the following:**

i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.

ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.

iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.

iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.

v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.

vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.

**B.** Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.

- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

**5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.**

- A. **Indemnification.** SUPPLIER shall indemnify, hold harmless and defend CITY from and against any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of SUPPLIER, its agents, servants, officers, officials, employees, or subcontractors. CITY reserves its rights to be represented in any such action by its own counsel at its own expense. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein. In addition, in claims against any person or entity indemnified under this Section by an employee of SUPPLIER or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for SUPPLIER or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive any termination or expiration of this Agreement.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

**6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.**

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
- B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
- C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.

- 7. **ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. **AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- 9. **AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary

actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.

- 10. CHOICE OF LAW/JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, Fl., if in federal court.
- 11. COMPLIANCE WITH LAWS.** SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:
- A. Discrimination/ADA.** SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.
  - B. Drug Free Workplace.** SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.
  - C. Immigration.** CITY shall not intentionally award publicly-funded contracts to any SUPPLIER 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)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.
  - D. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.
  - E. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:
    - a. The Contractor's political opinions, speech, or affiliations;
    - b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
    - c. The Contractor's lawful ownership of a firearm;
    - d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
    - e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
    - f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
    - g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
    - h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee

participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**F. Conflict of Interest.**

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.

**G.** Violation of this Section shall be considered as justification for immediate termination of this Agreement.

**12. CONTRACT DOCUMENTS.** The ITB and all submissions prepared by SUPPLIER in response to the ITB are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

**13. ENFORCEABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

**14. ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

**15. E-VERIFY REGISTRATION AND USE.** Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A.** All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B.** All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of

such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

**16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.

**17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.

**18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

**19. MOST FAVORED CUSTOMER.** SUPPLIER warrants and represents that all terms, including prices, charges, benefits and warranties, in this Agreement are at least as or more favorable than any terms that SUPPLIER has offered to any other person or entity, for the types of Services covered by this Agreement. If at any time during this Agreement SUPPLIER shall offer any other person or entity terms more favorable, SUPPLIER shall promptly notify CITY of such more favorable terms, and if such more favorable terms were offered by SUPPLIER to another person or entity CITY shall immediately receive the benefit of the more favorable terms for the remainder of this Agreement, including any renewals thereof, as well as retroactively to the effective date such more favorable terms were offered by SUPPLIER. Upon CITY'S request, SUPPLIER shall advise CITY in writing, executed by an officer of SUPPLIER, that this section has not been contradicted by SUPPLIER since the later of (i) the Effective Date of this Agreement or (ii) the date of the most recent notice provided by SUPPLIER pursuant to this section.

**20. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

**FOR CITY:**  
The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR SUPPLIER:**  
Jonathan Hunt  
Lawn Enforcement Agency, Inc.  
PO Box 141091  
Gainesville, Florida 32614

**21. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.

**22. PUBLIC RECORDS LAW.**

**A.** The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:

- i. Keep and maintain all public records required by CITY to perform the Services herein; and
  - ii. Upon request from CITY'S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
  - iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.
- B.** All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.
- c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**23. SEVERABILITY.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

**24. SUBCONTRACTORS.** In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY'S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER'S duties commensurately with SUPPLIER'S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.

**25. WAIVER.** The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

**LAWN ENFORCEMENT AGENCY, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Print: Denise Bevan

Print Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits

- A - Work Order Template Form
- B - Insurance Requirements
- C - Price Schedule



Exhibit A - Work Order Template Form



Work Order # \_\_\_\_\_ PO# \_\_\_\_\_ Project Mgr. \_\_\_\_\_  
name

SUPPLIER NAME: \_\_\_\_\_

Contract Project Title \_\_\_\_\_ Work Order Project Title \_\_\_\_\_

Contract Bid # \_\_\_\_\_ Work Order Bid # \_\_\_\_\_

Contract Resolution # \_\_\_\_\_ Work Order Resolution # \_\_\_\_\_

TOTAL COST: \$ \_\_\_\_\_

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated \_\_\_\_\_ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): \_\_\_\_\_ FIXED FEE/LUMP SUM \_\_\_\_\_ UNIT BASED/ NOT TO EXCEED\*
3. **PRICING** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): \_\_\_\_\_ AS NEEDED BASIS \_\_\_\_\_ SHALL BE COMPLETED BY - \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_
5. **DESCRIPTION OF SERVICES** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, identify: \_\_\_\_\_
7. **MISCELLANEOUS:** \_\_\_\_\_
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

SUPPLIER APPROVAL

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

CITY APPROVAL

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: Assistant City Manager or Designee  
 Date: \_\_\_\_\_

BPO Use Only:

Req # \_\_\_\_\_ Requisition Creator \_\_\_\_\_  
name  
 Select one: \_\_\_\_\_ New PO \_\_\_\_\_ Increase to Existing/ P.O. Adjustment

**EXHIBIT B**  
**Insurance Requirements**

**1. GENERAL.**

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

**2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. 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, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY 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 SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum

requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**  
 \$500,000.00 (Each Accident)  
 \$500,000.00 (Disease-Each Employee)  
 \$500,000.00 (Disease-Policy Limit)

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

	LIMITS
General Aggregate (per project greater)	\$2,000,000.00 or 2x Per Occurrence (whichever is greater)
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

	LIMITS
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00

**3.4. Professional Liability:** SUPPLIER 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 SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.

**EXHIBIT C  
Price Schedule**

**(See attached)**

**Scope of Service "G" Mowing of Effluent Disposal Sites**

The Utility operates two Wastewater Treatment Effluent Disposal sites located on Old Kings Road South. The sites are approximately 97 acres combined. Sites are to be mowed to ensure a uniform appearance. Sites to be mowed seven times per year and will be scheduled based on current plant operations and weather events.

Areas not able to be mowed including all above ground piping, concrete structures, buildings, and monitoring wells will be maintained by either weed eating around areas or spraying with herbicide as needed at each mowing cycle to assure a uniform appearance.

**ALTERNATE BID: SCOPE "G" – LUMP SUM PRICE FOR MONTHLY SERVICE**

Price in US Dollars: \$ 4,474.00

Price written out: Four thousand four hundred seventy-four and 00/100

*Prices shall include all applicable taxes.*

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), between VERDEGO, LLC., whose primary place of business is 3335 North State Street, Bunnell, Florida 32110 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

### WITNESSETH:

**WHEREAS**, CITY desires to procure **Utility Landscape and Grounds Maintenance Services** from a competent and qualified supplier and has conducted a formal Invitation to Bid # ITB-UT-23-55 (ITB) requesting bids/quotes for the services; and

**WHEREAS**, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the ITB and desires to render said services to CITY at the firm prices established herein and in accordance with the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

#### 1. SUPPLY OF SERVICES:

- A. Work Order/Services.** This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.
- B. Quality of Services.** SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature
- C. Schedule/Delivery.** Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

## **2. COMPENSATION:**

- A. Costs and Expenses.** Pricing for the performance of Services as specifically set forth in any Work Order issued hereunder shall be in accordance with the rates, fees and discounts set forth in Exhibit C, Price Schedule. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly

attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com).
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

### **3. TERM AND TERMINATION:**

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of three (3) years. Following the initial term and at the sole option of CITY, this Agreement may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
  - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
  - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
    - 1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
    - 2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
    - 3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
    - 4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.

iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.

**C. Termination By SUPPLIER.** SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.

**D. Cooperation.** Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.

**E. Survivability.** The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES.**

##### **A. SUPPLIER represents and warrants the following:**

i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.

ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.

iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.

iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.

v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.

vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.

**B.** Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.



- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

**5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.**

- A. **Indemnification.** SUPPLIER shall indemnify, hold harmless and defend CITY from and against any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of SUPPLIER, its agents, servants, officers, officials, employees, or subcontractors. CITY reserves its rights to be represented in any such action by its own counsel at its own expense. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein. In addition, in claims against any person or entity indemnified under this Section by an employee of SUPPLIER or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for SUPPLIER or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive any termination or expiration of this Agreement.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

**6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.**

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
- B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
- C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.

- 7. **ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. **AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- 9. AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.
- 10. CHOICE OF LAW/JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, Fl., if in federal court.
- 11. COMPLIANCE WITH LAWS.** SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:
- A. Discrimination/ADA.** SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.
- B. Drug Free Workplace.** SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.
- C. Immigration.** CITY shall not intentionally award publicly-funded contracts to any SUPPLIER 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)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.
- D. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.
- E. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:
- a. The Contractor's political opinions, speech, or affiliations;
  - b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
  - c. The Contractor's lawful ownership of a firearm;
  - d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
  - e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
  - f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
  - g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
  - h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected

under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**F. Conflict of Interest.**

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.

**G.** Violation of this Section shall be considered as justification for immediate termination of this Agreement.

**12. CONTRACT DOCUMENTS.** The ITB and all submissions prepared by SUPPLIER in response to the ITB are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

**13. ENFORCEABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

**14. ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

**15. E-VERIFY REGISTRATION AND USE.** Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or

subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

- 16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.
- 17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.
- 18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.
- 19. MOST FAVORED CUSTOMER.** SUPPLIER warrants and represents that all terms, including prices, charges, benefits and warranties, in this Agreement are at least as or more favorable than any terms that SUPPLIER has offered to any other person or entity, for the types of Services covered by this Agreement. If at any time during this Agreement SUPPLIER shall offer any other person or entity terms more favorable, SUPPLIER shall promptly notify CITY of such more favorable terms, and if such more favorable terms were offered by SUPPLIER to another person or entity CITY shall immediately receive the benefit of the more favorable terms for the remainder of this Agreement, including any renewals thereof, as well as retroactively to the effective date such more favorable terms were offered by SUPPLIER. Upon CITY'S request, SUPPLIER shall advise CITY in writing, executed by an officer of SUPPLIER, that this section has not been contradicted by SUPPLIER since the later of (i) the Effective Date of this Agreement or (ii) the date of the most recent notice provided by SUPPLIER pursuant to this section.
- 20. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

**FOR CITY:**  
The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR SUPPLIER:**  
T.J. McNitt  
VerdeGo, LLC  
PO Box 789  
Bunnell, Florida 32110

- 21. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.
- 22. PUBLIC RECORDS LAW.**
  - A.** The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or

an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:

- i. Keep and maintain all public records required by CITY to perform the Services herein; and
  - ii. Upon request from CITY'S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
  - iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.
- B.** All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.
- c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**23. SEVERABILITY.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

**24. SUBCONTRACTORS.** In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY'S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER'S duties commensurately with SUPPLIER'S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.

**25. WAIVER.** The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**IN WITNESS WHEREOF,** the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

**VERDEGO, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Print: Denise Bevan

Print Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits**

A - Work Order Template Form

B - Insurance Requirements

C - Price Schedule

Exhibit A - Work Order Template Form



Work Order # \_\_\_\_\_ PO# \_\_\_\_\_ Project Mgr. \_\_\_\_\_  
name

SUPPLIER NAME: \_\_\_\_\_

Contract Project Title \_\_\_\_\_ Work Order Project Title \_\_\_\_\_

Contract Bid # \_\_\_\_\_ Work Order Bid # \_\_\_\_\_

Contract Resolution # \_\_\_\_\_ Work Order Resolution # \_\_\_\_\_

TOTAL COST: \$ \_\_\_\_\_

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated \_\_\_\_\_ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): \_\_\_\_\_ FIXED FEE/LUMP SUM \_\_\_\_\_ UNIT BASED/ NOT TO EXCEED\*
3. **PRICING** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): \_\_\_\_\_ AS NEEDED BASIS \_\_\_\_\_ SHALL BE COMPLETED BY - \_\_\_\_/\_\_\_\_/20\_\_\_\_
5. **DESCRIPTION OF SERVICES** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, identify: \_\_\_\_\_
7. **MISCELLANEOUS:** \_\_\_\_\_
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

SUPPLIER APPROVAL

CITY APPROVAL

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Assistant City Manager or Designee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

BPO Use Only:

Req # \_\_\_\_\_

Requisition Creator \_\_\_\_\_  
name

Select one: \_\_\_\_\_ New PO \_\_\_\_\_ Increase to Existing/ P.O. Adjustment

**EXHIBIT B**  
**Insurance Requirements**

**1. GENERAL.**

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

**2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. 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, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY 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 SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum



requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**  
 \$500,000.00 (Each Accident)  
 \$500,000.00 (Disease-Each Employee)  
 \$500,000.00 (Disease-Policy Limit)

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

	LIMITS
General Aggregate (per project greater)	\$2,000,000.00 or 2x Per Occurrence (whichever is greater)
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

	LIMITS
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00

**3.4. Professional Liability:** SUPPLIER 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 SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.

**EXHIBIT C  
Price Schedule**

**(See attached)**

<u>SCOPE &amp; LOCATION</u>	<u>MONTHLY FEE PER INDIVIDUAL SCOPE</u>
A. Utility Main Facilities, Plants and Offices	<u><b>\$14,423.58</b></u>
B. Other Major Facilities – Elevated Tanks & Cigar Lake	<u><b>\$1,438.50</b></u>
C. Improved Pump Stations (164)	<u><b>\$7,270.67</b></u>
D. Unimproved Pump Stations	<u><b>\$83.91</b></u>
E. Pump Station Panels in Rights of Way	<u><b>\$347.59</b></u>
F. Well Sites (65)	<u><b>\$2,877.00</b></u>
<b>SUM OF ITEMS A-F ABOVE: (Lump Sum Bid for Price Schedule Entry)</b>	<u><b>\$26,441.25</b></u>

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	WATER TREATMENT PLANT 1	<b>Amount</b>	\$ 183,170.00
<b>Division</b>	UTILITY	<b>Account</b>	# 54019086 034000
<b>Subject:</b> RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR DRYING BED CLEANING			
<b>Presenter:</b> Peter Roussell, Utility Deputy Director			
<b>Attachments:</b>			
<ol style="list-style-type: none"> <li>1. Resolution</li> <li>2. Intent to Award</li> <li>3. Project Overview</li> <li>4. Draft Contract</li> </ol>			
<b>Background:</b>			
<b>Council Priority:</b>			
<b>D. Sustainable Environment &amp; Infrastructure</b>			
<p>The City of Palm Coast Utility Department operates a 6.0 million gallon per day water treatment facility (Water Treatment Plant 1) located at 4 Corporate Drive North in Palm Coast. Water Treatment Plant 1 has approximately 6,500 cubic yards of lime sludge that needs to be removed, hauled, and disposed of from the sludge drying bed. The City’s Utility Department utilizes lime as a treatment chemical to precipitate carbonate hardness resulting in a non-hazardous by-product (sludge). The sludge is dewatered and stockpiled on City property (Water Treatment Plant #1) and needs to be disposed of. Historically, the sludge was dewatered, dried, and hauled off on an annual basis. Due to the liquid sludge hauling process, we have not had to conduct the dry lime sludge removal in approximately four years. Joe Dirt Inc. was the low bidder for the City of Palm Coast Utility Bid # ITB-UT-23-45. The low bid is \$35.00 per cubic yard.</p> <p>City staff advertised ITB-UT-23-45 for drying bed cleaning in accordance with the City’s Purchasing Policy. The Project Bid Overview and Notice of Intent to Award are attached. Staff recommends City Council approve a Master Services Agreement with Joe Dirt, Inc., for drying bed cleaning. The contract shall terminate at the end of one (1) year. City staff will obtain these services on an as-needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2024 Budget includes funds within Utilities budget to purchase these services.</p>			

**SOURCE OF FUNDS WORKSHEET FY 2024**

<b>UTILITYFND OTHER CONTRACTUAL SVCS 54019086 034000</b>	<b>\$1,067,770.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$466,830.00
Current (WO/Contract)	<u>\$183,170.00</u>
<b>Balance</b>	<b>\$417,770.00</b>

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC. FOR DRYING BED CLEANING**

**RESOLUTION 2023-\_\_\_\_**  
**DRYING BED CLEANING**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR WATER TREATMENT PLANT 1 DRYING BED CLEANING; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE, AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Joe Dirt, Inc., has expressed a desire to provide a master services agreement for Water Treatment Plant 1 drying bed cleaning to the City of Palm Coast; and

**WHEREAS**, the City Council of the City of Palm Coast desires to approve a master services agreement with Joe Dirt, Inc., for Water Treatment Plant 1 drying bed cleaning.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF AGREEMENT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the master services agreement with Joe Dirt, Inc., for Water Treatment Plant 1 drying bed cleaning, as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.** The City Manager, or Designee is hereby authorized to negotiate, finalize, and execute the necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Master Services Agreement-Joe Dirt, Inc.



# city of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-UT-23-45 - WTP1 DRYING BED CLEANING - MSA

**Date:** 6/22/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 6/27/2023

Firm	Bid
<b>Joe Dirt, Inc.</b> St. Augustine, FL	\$35.00 per cubic yard
<b>Prolime Corporation</b> Washington, MI	\$39.95 per cubic yard

The intent of the City of Palm Coast is to award ITB-UT-23-45 to **Joe Dirt, Inc.**

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [jkscott@palmcoastgov.com](mailto:jkscott@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*





# ITB-UT-23-45 - WTP1 DRYING BED CLEANING - MSA

## Project Overview

Project Details	
Reference ID	ITB-UT-23-45
Project Name	WTP1 DRYING BED CLEANING - MPA
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 bids from qualified companies to provide Drying Bed Cleaning at WTP1.
Open Date	May 31, 2023, 8:00 AM EDT
Intent to Bid Due	Jun 14, 2023, 2:00 PM EDT
Close Date	Jun 15, 2023, 2:00 PM EDT

Awarded Suppliers	Reason	Score
Joe Dirt, Inc.		100 pts





## Seal status

Requested Information	Unsealed on	Unsealed by
Price schedule	Jun 15, 2023, 2:05 PM EDT	Jesse Scott
References	Jun 15, 2023, 2:05 PM EDT	Jesse Scott
Required Forms	Jun 15, 2023, 2:05 PM EDT	Jesse Scott
Signed and Dated Addenda (if issued)	Jun 15, 2023, 2:05 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?
Donald Holcomb	Jun 16, 2023, 7:37 AM EDT	No
Ryan Bellerive	Jun 15, 2023, 2:35 PM EDT	No
Jesse Scott	Jun 15, 2023, 2:06 PM EDT	No
David Nelson	Jun 20, 2023, 8:00 AM EDT	No



## Project Criteria

Criteria	Points	Description
Admin Review	Pass/Fail	Documents completed and submitted as requested.
Technical Review	Pass/Fail	Technical review to include verifying and checking references.
Technical Price Review	Pass/Fail	Confirm Pass or Fail based on question: Knowing the market for the goods or services, do submitted prices seem reasonable.
Pricing Review	100 pts	Price entry from submitted bids
<b>Total</b>	<b>100 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Admin Review</b>	<b>Technical Review</b>	<b>Technical Price Review</b>	<b>Pricing Review</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
Joe Dirt, Inc.	100 pts	Pass	Pass	Pass	100 pts (\$35)
Prolime Corporation	87.61 pts	Pass	Pass	Pass	87.61 pts (\$39.95)

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), between JOE DIRT, INC., whose primary place of business is 2745 Long Road, St. Augustine, Florida 32084 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

### WITNESSETH:

**WHEREAS**, CITY desires to procure **Water Treatment Plant 1 Drying Bed Cleaning Services** from a competent and qualified supplier and has conducted a formal Invitation of Bid # ITB-UT-23-45 (ITB) requesting bids/quotes for the services; and

**WHEREAS**, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the ITB and desires to render said services to CITY at the firm prices established herein and in accordance with the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

#### 1. SUPPLY OF SERVICES:

- A. Work Order/Services.** This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.
- B. Quality of Services.** SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature
- C. Schedule/Delivery.** Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

## **2. COMPENSATION:**

- A. Costs and Expenses.** Pricing for the performance of Services as specifically set forth in any Work Order issued hereunder shall be in accordance with the rates, fees and discounts set forth in Exhibit C, Price Schedule. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly

attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com).
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

### **3. TERM AND TERMINATION:**

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of one (1) year. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
  - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
  - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
    1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
    2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
    3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
    4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
    5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

- iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.
  - iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.
- C. Termination By SUPPLIER.** SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.
- D. Cooperation.** Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.
- E. Survivability.** The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES.**

##### **A. SUPPLIER represents and warrants the following:**

- i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.
  - ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.
  - iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.
  - iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.
  - v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.
  - vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.
- B.** Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.



- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

**5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.**

- A. **Indemnification.** SUPPLIER shall indemnify, hold harmless and defend CITY from and against any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of SUPPLIER, its agents, servants, officers, officials, employees, or subcontractors. CITY reserves its rights to be represented in any such action by its own counsel at its own expense. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein. In addition, in claims against any person or entity indemnified under this Section by an employee of SUPPLIER or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for SUPPLIER or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive any termination or expiration of this Agreement.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

**6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.**

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
- B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
- C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.

- 7. **ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. **AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- 9. **AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all

obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.

- 10. CHOICE OF LAW/JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.
- 11. COMPLIANCE WITH LAWS.** SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:
- A. Discrimination/ADA.** SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.
  - B. Drug Free Workplace.** SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.
  - C. Immigration.** CITY shall not intentionally award publicly-funded contracts to any SUPPLIER 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)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.
  - D. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.
  - E. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:
    - a. The Contractor's political opinions, speech, or affiliations;
    - b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
    - c. The Contractor's lawful ownership of a firearm;
    - d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
    - e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
    - f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
    - g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
    - h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**F. Conflict of Interest.**

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.

**G.** Violation of this Section shall be considered as justification for immediate termination of this Agreement.

**12. CONTRACT DOCUMENTS.** The ITB and all submissions prepared by SUPPLIER in response to the ITB are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

**13. ENFORCEABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

**14. ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

**15. E-VERIFY REGISTRATION AND USE.** Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A.** All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B.** All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a

public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

- 16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.
- 17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.
- 18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.
- 19. MOST FAVORED CUSTOMER.** SUPPLIER warrants and represents that all terms, including prices, charges, benefits and warranties, in this Agreement are at least as or more favorable than any terms that SUPPLIER has offered to any other person or entity, for the types of Services covered by this Agreement. If at any time during this Agreement SUPPLIER shall offer any other person or entity terms more favorable, SUPPLIER shall promptly notify CITY of such more favorable terms, and if such more favorable terms were offered by SUPPLIER to another person or entity CITY shall immediately receive the benefit of the more favorable terms for the remainder of this Agreement, including any renewals thereof, as well as retroactively to the effective date such more favorable terms were offered by SUPPLIER. Upon CITY'S request, SUPPLIER shall advise CITY in writing, executed by an officer of SUPPLIER, that this section has not been contradicted by SUPPLIER since the later of (i) the Effective Date of this Agreement or (ii) the date of the most recent notice provided by SUPPLIER pursuant to this section.
- 20. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

**FOR CITY:**  
The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR SUPPLIER:**  
Joe Williams, President  
Joe Dirt, Inc.  
2745 Long Road  
St. Augustine, Florida 32084

- 21. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.
- 22. PUBLIC RECORDS LAW.**
  - A.** The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:
    - i. Keep and maintain all public records required by CITY to perform the Services herein; and

- ii. Upon request from CITY'S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
  - iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.
- B. All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.**
- c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

- 23. SEVERABILITY.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.
- 24. SUBCONTRACTORS.** In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY'S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER'S duties commensurately with SUPPLIER'S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.
- 25. WAIVER.** The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

**JOE DIRT, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Print: Denise Bevan

Print Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits**

- A - Work Order Template Form
- B - Insurance Requirements
- C - Price Schedule

Exhibit A - Work Order Template Form



Work Order # \_\_\_\_\_ PO# \_\_\_\_\_ Project Mgr. \_\_\_\_\_  
name

SUPPLIER NAME: \_\_\_\_\_

Contract Project Title \_\_\_\_\_ Work Order Project Title \_\_\_\_\_

Contract Bid # \_\_\_\_\_ Work Order Bid # \_\_\_\_\_

Contract Resolution # \_\_\_\_\_ Work Order Resolution # \_\_\_\_\_

TOTAL COST: \$ \_\_\_\_\_

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated \_\_\_\_\_ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): \_\_\_\_\_ FIXED FEE/LUMP SUM \_\_\_\_\_ UNIT BASED/ NOT TO EXCEED\*
3. **PRICING** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): \_\_\_\_\_ AS NEEDED BASIS \_\_\_\_\_ SHALL BE COMPLETED BY - \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_
5. **DESCRIPTION OF SERVICES** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, identify: \_\_\_\_\_
7. **MISCELLANEOUS:** \_\_\_\_\_
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

SUPPLIER APPROVAL

CITY APPROVAL

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Assistant City Manager or Designee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

BPO Use Only:

Req # \_\_\_\_\_

Requisition Creator \_\_\_\_\_  
name

Select one: \_\_\_\_\_ New PO \_\_\_\_\_ Increase to Existing/ P.O. Adjustment

**EXHIBIT B**  
**Insurance Requirements**

**1. GENERAL.**

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

**2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. 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, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY 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 SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum



requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**  
 \$500,000.00 (Each Accident)  
 \$500,000.00 (Disease-Each Employee)  
 \$500,000.00 (Disease-Policy Limit)

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

	LIMITS
General Aggregate (per project greater)	\$2,000,000.00 or 2x Per Occurrence (whichever is greater)
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

	LIMITS
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00

**3.4. Professional Liability:** SUPPLIER 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 SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.

**EXHIBIT C  
Price Schedule**

(See attached)

**PRICE SCHEDULE**

Joe Dirt, Inc.  
Company Name of Bidder  
2745 Long Rd.  
Mailing Address  
St. Augustine, FL 32084  
City, State, Zip  
wshecky@yahoo.com 904-806-0187  
email Phone

Price in US Dollars: \$ \$ 35.00 / cy. yd.

Price written out: thirty-five dollars per cubic yard  
*Prices shall include all applicable taxes.*

If this project involves improvements to City Property, and the value of the contract will be greater than \$200,000, Bidder is required to provide Payment and Performance bonds in compliance with Section 255.05 Florida Statutes. If applicable, please provide the price of the bonds here:

Bond Price in US Dollars: \$ \_\_\_\_\_

Bond Price written out: \_\_\_\_\_

Pursuant to and in compliance with the Invitation To Bid, and the other documents relating thereto, the undersigned Bidder, having familiarized himself/herself with the terms of the Contract Documents, local conditions affecting the performance of the work, and the cost of the work at the places where the work is to be done, hereby proposes and agrees to deliver materials/services in a workmanlike manner and in strict conformity with Invitation to Bid requirements, including any addenda, and Contract Documents, for the amount set forth above.

Joe Williams 6/6/23  
Authorized Signatory Date  
Joe Williams  
Name  
President  
Title

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	WATER AND WASTEWATER	<b>Amount</b>	\$ 466,830.00
<b>Division</b>	UTILITY	<b>Account</b>	# 54019086 034000
<b>Subject:</b> RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL			
<b>Presenter:</b> Peter Roussell, Utility Deputy Director			
<b>Attachments:</b>			
<ol style="list-style-type: none"> <li>1. Resolution</li> <li>2. Intent to Award</li> <li>3. Project Overview</li> <li>4. Draft Contract</li> </ol>			
<b>Background:</b>			
<b>Council Priority:</b>			
<b>D. Sustainable Environment &amp; Infrastructure</b>			
<p>The City's Utility Department / Water Treatment Plant 1 located at 4 Corporate Drive in Palm Coast generates liquid lime sludge daily that needs to be removed, hauled, and disposed of from the sludge thickener. The process of removing liquid lime sludge directly from the sludge thickener will allow the sludge in the lagoon to dry quicker. The drying time is a critical factor and is often based on climate factors as well as, applying the wet sludge to the lagoon while the sludge is trying to dry.</p> <p>City staff advertised ITB-UT-23-44 removal, hauling and disposal of liquid lime sludge in accordance with the City's purchasing policy. The Project Bid Overview and Notice of Intent to Award are attached.</p> <p>Staff recommends City Council approve a Master Services Agreement with Joe Dirt, Inc., for the removal, hauling, and disposal of liquid lime sludge. The contract will be (1) one year with (2) two one-year renewals.</p> <p>City staff will obtain these services on an as-needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2024 Budget includes funds within Utilities budget to purchase these services.</p>			

<b>SOURCE OF FUNDS WORKSHEET FY 2024</b>	
<b>UTILITYFND OTHER CONTRACTUAL SVCS 54019086 034000</b>	<b>\$1,067,770.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$183,170.00
Current (WO/Contract)	<u>\$466,830.00</u>
<b>Balance</b>	<b>\$417,770.00</b>

**Recommended Action:**  
**ADOPT RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**

**RESOLUTION 2023-\_\_\_\_**  
**LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC., FOR THE REMOVAL, HAULING AND DISPOSAL OF LIQUID LIME SLUDGE FROM WATER TREATMENT PLANT 1; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE, AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Joe Dirt, Inc., has expressed a desire to provide a master services agreement for the removal, hauling, and disposal of liquid lime sludge to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to approve a master services agreement with Joe Dirt, Inc., for the removal, hauling, and disposal of liquid lime sludge.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF AGREEMENT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the master services agreement with Joe Dirt Inc., for the removal, hauling, and disposal of liquid lime sludge, as attached hereto and incorporated herein by reference as Exhibit "A."

**SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.** The City Manager, or Designee is hereby authorized to negotiate, finalize, and execute the necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Master Services Agreement with Joe Dirt, Inc.



# City of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-UT-23-44 - WTP1 LIQUID LIME SLUDGE  
REMOVAL, HAULING AND DISPOSAL - MSA

**Date:** 6/22/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 6/27/2023

Firm	Bid
Joe Dirt, Inc. St. Augustine, FL	\$598.00 per load

The intent of the City of Palm Coast is to award ITB-UT-23-44 to **Joe Dirt, Inc.**

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [jkscott@palmcoastgov.com](mailto:jkscott@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*



# ITB-UT-23-44 - WTP1 LIQUID LIME SLUDGE REMOVAL, HAULING AND DISPOSAL - MSA

## Project Overview

Project Details	
Reference ID	ITB-UT-23-44
Project Name	WTP1 LIQUID LIME SLUDGE REMOVAL, HAULING AND DISPOSAL - MPA
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 bids from qualified companies to provide liquid lime sludge removal, hauling and disposal from Water Plant #1.
Open Date	May 31, 2023, 8:00 AM EDT
Intent to Bid Due	Jun 14, 2023, 2:00 PM EDT
Close Date	Jun 15, 2023, 2:00 PM EDT

Awarded Suppliers	Reason	Score
Joe Dirt, Inc		100 pts

## Seal status





Requested Information	Unsealed on	Unsealed by
Price schedule	Jun 15, 2023, 2:00 PM EDT	Jesse Scott
References	Jun 15, 2023, 2:00 PM EDT	Jesse Scott
Required Forms	Jun 15, 2023, 2:00 PM EDT	Jesse Scott
Signed and Dated Addenda (if issued)	Jun 15, 2023, 2:00 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?
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Donald Holcomb	Jun 16, 2023, 7:45 AM EDT	No
Ryan Bellerive	Jun 15, 2023, 2:34 PM EDT	No
Jesse Scott	Jun 15, 2023, 2:01 PM EDT	No
David Nelson	Jun 20, 2023, 7:57 AM EDT	No



## Scoring Summary

### Active Submissions

	<b>Total</b>	<b>Admin Review</b>	<b>Technical Review</b>	<b>Technical Price Review</b>	<b>Pricing Review</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
Joe Dirt, Inc.	100 pts	Pass	Pass	Pass	100 pts (\$598)

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), between JOE DIRT, INC., whose primary place of business is 2745 Long Road, St. Augustine, Florida 32084 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

### WITNESSETH:

**WHEREAS**, CITY desires to procure **Liquid Lime Sludge Removal Hauling and Disposal Services** from a competent and qualified supplier and has conducted a formal Invitation of Bid # ITB-UT-23-44 (ITB) requesting bids/quotes for the services; and

**WHEREAS**, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the ITB and desires to render said services to CITY at the firm prices established herein and in accordance with the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

#### 1. SUPPLY OF SERVICES:

- A. Work Order/Services.** This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.
- B. Quality of Services.** SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature
- C. Schedule/Delivery.** Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

## **2. COMPENSATION:**

- A. Costs and Expenses.** Pricing for the performance of Services as specifically set forth in any Work Order issued hereunder shall be in accordance with the rates, fees and discounts set forth in Exhibit C, Price Schedule. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly

attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com).
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

### **3. TERM AND TERMINATION:**

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of three (3) years. Following the initial term and at the sole option of CITY, this Agreement may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
  - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
  - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
    - 1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
    - 2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
    - 3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
    - 4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.

iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.

**C. Termination By SUPPLIER.** SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.

**D. Cooperation.** Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.

**E. Survivability.** The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES.**

##### **A. SUPPLIER represents and warrants the following:**

i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.

ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.

iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.

iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.

v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.

vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.

**B.** Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.

- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

**5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.**

- A. **Indemnification.** SUPPLIER shall indemnify, hold harmless and defend CITY from and against any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of SUPPLIER, its agents, servants, officers, officials, employees, or subcontractors. CITY reserves its rights to be represented in any such action by its own counsel at its own expense. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein. In addition, in claims against any person or entity indemnified under this Section by an employee of SUPPLIER or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for SUPPLIER or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive any termination or expiration of this Agreement.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

**6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.**

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
- B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
- C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.

- 7. **ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. **AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.



- 9. AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.
- 10. CHOICE OF LAW/JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, Fl., if in federal court.
- 11. COMPLIANCE WITH LAWS.** SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:
- A. Discrimination/ADA.** SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.
- B. Drug Free Workplace.** SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.
- C. Immigration.** CITY shall not intentionally award publicly-funded contracts to any SUPPLIER 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)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.
- D. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.
- E. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:
- a. The Contractor's political opinions, speech, or affiliations;
  - b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
  - c. The Contractor's lawful ownership of a firearm;
  - d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
  - e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
  - f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
  - g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
  - h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected

under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**F. Conflict of Interest.**

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.

**G.** Violation of this Section shall be considered as justification for immediate termination of this Agreement.

**12. CONTRACT DOCUMENTS.** The ITB and all submissions prepared by SUPPLIER in response to the ITB are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

**13. ENFORCEABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

**14. ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

**15. E-VERIFY REGISTRATION AND USE.** Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or

subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

**16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.

**17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.

**18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

**19. MOST FAVORED CUSTOMER.** SUPPLIER warrants and represents that all terms, including prices, charges, benefits and warranties, in this Agreement are at least as or more favorable than any terms that SUPPLIER has offered to any other person or entity, for the types of Services covered by this Agreement. If at any time during this Agreement SUPPLIER shall offer any other person or entity terms more favorable, SUPPLIER shall promptly notify CITY of such more favorable terms, and if such more favorable terms were offered by SUPPLIER to another person or entity CITY shall immediately receive the benefit of the more favorable terms for the remainder of this Agreement, including any renewals thereof, as well as retroactively to the effective date such more favorable terms were offered by SUPPLIER. Upon CITY'S request, SUPPLIER shall advise CITY in writing, executed by an officer of SUPPLIER, that this section has not been contradicted by SUPPLIER since the later of (i) the Effective Date of this Agreement or (ii) the date of the most recent notice provided by SUPPLIER pursuant to this section.

**20. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

**FOR CITY:**  
The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR SUPPLIER:**  
Joe Williams, President  
Joe Dirt, Inc.  
2745 Long Road  
St. Augustine, Florida 32084

**21. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.

## 22. PUBLIC RECORDS LAW.

A. The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:

- i. Keep and maintain all public records required by CITY to perform the Services herein; and
- ii. Upon request from CITY'S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
- iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.

B. All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.

**c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, [cityclerk@palmcoastgov.com](mailto:cityclerk@palmcoastgov.com), 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

23. **SEVERABILITY.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

24. **SUBCONTRACTORS.** In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY'S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER'S duties commensurately with SUPPLIER'S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.

25. **WAIVER.** The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

**JOE DIRT, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Print: Denise Bevan

Print Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits**

- A - Work Order Template Form
- B - Insurance Requirements
- C - Price Schedule

Exhibit A - Work Order Template Form



Work Order # \_\_\_\_\_ PO# \_\_\_\_\_ Project Mgr. \_\_\_\_\_  
name

SUPPLIER NAME: \_\_\_\_\_

Contract Project Title \_\_\_\_\_ Work Order Project Title \_\_\_\_\_

Contract Bid # \_\_\_\_\_ Work Order Bid # \_\_\_\_\_

Contract Resolution # \_\_\_\_\_ Work Order Resolution # \_\_\_\_\_

TOTAL COST: \$ \_\_\_\_\_

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated \_\_\_\_\_ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): \_\_\_\_\_ FIXED FEE/LUMP SUM \_\_\_\_\_ UNIT BASED/ NOT TO EXCEED\*
3. **PRICING** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): \_\_\_\_\_ AS NEEDED BASIS \_\_\_\_\_ SHALL BE COMPLETED BY - \_\_\_\_/\_\_\_\_/20\_\_\_\_
5. **DESCRIPTION OF SERVICES** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, identify: \_\_\_\_\_
7. **MISCELLANEOUS:** \_\_\_\_\_
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

SUPPLIER APPROVAL

CITY APPROVAL

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Assistant City Manager or Designee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

BPO Use Only:

Req # \_\_\_\_\_ Requisition Creator \_\_\_\_\_  
name

Select one: \_\_\_\_\_ New PO \_\_\_\_\_ Increase to Existing/ P.O. Adjustment

**EXHIBIT B**  
**Insurance Requirements**

**1. GENERAL.**

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

**2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. 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, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY 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 SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum

requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**  
 \$500,000.00 (Each Accident)  
 \$500,000.00 (Disease-Each Employee)  
 \$500,000.00 (Disease-Policy Limit)

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

	LIMITS
General Aggregate (per project greater)	\$2,000,000.00 or 2x Per Occurrence (whichever is greater)
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

	LIMITS
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00

**3.4. Professional Liability:** SUPPLIER 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 SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.



**EXHIBIT C  
Price Schedule**

(See attached)

**PRICE SCHEDULE**

Joe Dirt, Inc.  
Company Name of Bidder  
2745 Long Rd.  
Mailing Address  
St. Augustine, FL 32084  
City, State, Zip  
wshecky@yahoo.com 904-806-0187  
email Phone

Price in US Dollars: \$ \$ 598.00 / load

Price written out: Five-Hundred and Ninety-eight dollars and no cents per loa  
*Prices shall include all applicable taxes.*

If this project involves improvements to City Property, and the value of the contract will be greater than \$200,000, Bidder is required to provide Payment and Performance bonds in compliance with Section 255.05 Florida Statutes. If applicable, please provide the price of the bonds here:

Bond Price in US Dollars: \$ \_\_\_\_\_

Bond Price written out: \_\_\_\_\_

Pursuant to and in compliance with the Invitation To Bid, and the other documents relating thereto, the undersigned Bidder, having familiarized himself/herself with the terms of the Contract Documents, local conditions affecting the performance of the work, and the cost of the work at the places where the work is to be done, hereby proposes and agrees to deliver materials/services in a workmanlike manner and in strict conformity with Invitation to Bid requirements, including any addenda, and Contract Documents, for the amount set forth above.

Joe Williams 6/6/23  
Authorized Signatory Date  
Joe Williams  
Name  
President  
Title

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	WATER OPERATIONS UTILITY	<b>Amount</b>	\$ 280,000.00
<b>Division</b>		<b>Account #</b>	# 54019087 034000
<b>Subject:</b>	RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL		
<b>Presenter:</b>	Peter Roussel, Utility Deputy Director		
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Resolution</li> <li>2. Intent to Award</li> <li>3. Project Overview</li> <li>4. Draft Master Services Agreement</li> </ol>		
<b>Background:</b>	<p><b>Council Priority:</b> <b>B. Sustainable Environment &amp; Infrastructure</b></p> <p>Water Treatment Plant 2 is a potable drinking water plant, treating a maximum of 6.1 million of gallons per day with an average flow of 3.9 million of gallons per day. Estimated load amounts are 1 load a day Monday through Saturday. This schedule is subject to change as the needs of the plant may change. Loads per day are not guaranteed and the above-mentioned schedule is to be considered an estimate. Upon execution of an agreement, The City of Palm Coast will establish a routine schedule.</p> <p>City staff advertised ITB-UT-23-62 removal, hauling and disposal of liquid lime sludge in accordance with the City’s Purchasing Policy. The Project Bid Overview and Notice of Intent to Award are attached.</p> <p>Staff recommends City Council approve a Master Services Agreement with Joe Dirt, Inc., for the removal, hauling, and disposal of liquid lime sludge. The length of the Master Price Agreement contract term will be three (3) years and allows for two (2) annual renewals.</p> <p>City staff will obtain these services on an as-needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2024 Budget includes funds within Utilities budget to purchase these services.</p>		

**SOURCE OF FUNDS WORKSHEET FY 2024**

<b>UTILITYFND OTHER CONTRACTUAL SVCS 54019087 034000</b>	<b>\$413,115.00</b>
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$280,000.00</u>
<b>Balance</b>	<b>\$133,115.00</b>

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT INC., FOR LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**

**RESOLUTION 2023-\_\_\_\_**  
**LIQUID LIME SLUDGE REMOVAL, HAULING, AND DISPOSAL**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A MASTER SERVICES AGREEMENT WITH JOE DIRT, INC. FOR THE REMOVAL, HAULING, AND DISPOSAL OF LIQUID LIME SLUDGE FROM WATER TREATMENT PLANT 2; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE, AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Joe Dirt, Inc., has expressed a desire to provide a master services agreement for the removal, hauling, and disposal of liquid lime sludge to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to approve a master services agreement with Joe Dirt, Inc., for the removal, hauling, and disposal of liquid lime sludge.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF AGREEMENT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the master services agreement with Joe Dirt Inc., for the removal, hauling and disposal of liquid lime sludge, as attached hereto and incorporated herein by reference as Exhibit "A."

**SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE.** The City Manager, or Designee is hereby authorized to negotiate, finalize, and execute the necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit A - Master Services Agreement-Joe Dirt, Inc.



# City of PALM COAST

Finance Department  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-UT-23-62 - WTP2 LIQUID LIME SLUDGE (CALCIUM OXIDE) REMOVAL, HAULING AND DISPOSAL - MSA

**Date:** 9/5/2023

**Appeal Deadline:** Appeals must be filed by 5:00 PM on 9/8/2023

Firm	Bid
<b>Joe Dirt, Inc.</b> St. Augustine, FL	\$849.50 per load

The intent of the City of Palm Coast is to award ITB-UT-23-62 to Joe Dirt, Inc.

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director.

*For questions regarding the NOIT please contact Procurement Coordinator [jkscott@palmcoastgov.com](mailto:jkscott@palmcoastgov.com).*

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office 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 Assistant City Manager, Lauren Johnston ( [LJohnston@palmcoastgov.com](mailto:LJohnston@palmcoastgov.com) ) shall constitute a waiver of the protest proceedings.*





# ITB-UT-23-62 - WTP2 LIQUID LIME SLUDGE (CALCIUM OXIDE) REMOVAL, HAULING AND DISPOSAL - MSA

## Project Overview

Project Details	
Reference ID	ITB-UT-23-62
Project Name	WTP2 LIQUID LIME SLUDGE (CALCIUM OXIDE) REMOVAL, HAULING AND DISPOSAL - MSA
Project Owner	Jesse Scott
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	The City of Palm Coast is soliciting bids from qualified companies to provide liquid lime sludge (calcium oxide) removal, hauling, and disposal services from Water Treatment Plant #2. The length of the Master Services Agreement contract term will be three (3) years and allows for two (2) annual renewals.
Open Date	Aug 16, 2023, 8:00 AM EDT
Intent to Bid Due	Aug 30, 2023, 2:00 PM EDT
Close Date	Sep 01, 2023, 2:00 PM EDT



Awarded Suppliers	Reason	Score
Joe Dirt Inc		100 pts

## Seal status

Requested Information	Unsealed on	Unsealed by
Price schedule	Sep 01, 2023, 2:03 PM EDT	Jesse Scott
References	Sep 01, 2023, 2:03 PM EDT	Jesse Scott
Required Forms	Sep 01, 2023, 2:03 PM EDT	Jesse Scott
Signed and Dated Addenda (if issued)	Sep 01, 2023, 2:03 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?
Donald Holcomb	Sep 01, 2023, 2:25 PM EDT	No
Ryan Bellerive	Sep 01, 2023, 2:07 PM EDT	No
Jesse Scott	Sep 01, 2023, 2:03 PM EDT	No
Robert nelson	Sep 01, 2023, 2:32 PM EDT	No



## Project Criteria

Criteria	Points	Description
Admin Review	Pass/Fail	Documents completed and submitted as requested.
Technical Review	Pass/Fail	Technical review to include verifying and checking references.
Technical Price Review	Pass/Fail	Confirm Pass or Fail based on question: Knowing the market for the goods or services, do submitted prices seem reasonable.
Pricing Review	100 pts	Price entry from submitted bids
<b>Total</b>	<b>100 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Admin Review</b>	<b>Technical Review</b>	<b>Technical Price Review</b>	<b>Pricing Review</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
Joe Dirt Inc	100 pts	Pass	Pass	Pass	100 pts (\$849.5)

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), between JOE DIRT, INC. whose primary place of business is 2745 Long Road, Saint Augustine, Florida 32084 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

### WITNESSETH:

**WHEREAS**, CITY desires to procure **WTP 2 Liquid Lime Sludge Removal, Hauling and Disposal Services** from a competent and qualified supplier and has conducted a formal Invitation to Bid # ITB-UT-23-62 (ITB) requesting bids/quotes for the services; and

**WHEREAS**, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the ITB and desires to render said services to CITY at the firm prices established herein and in accordance with the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

#### 1. SUPPLY OF SERVICES:

- A. Work Order/Services.** This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.
- B. Quality of Services.** SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature
- C. Schedule/Delivery.** Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

## **2. COMPENSATION:**

- A. Costs and Expenses.** Pricing for the performance of Services as specifically set forth in any Work Order issued hereunder shall be in accordance with the rates, fees and discounts set forth in Exhibit C, Price Schedule. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly

attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com).
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

### **3. TERM AND TERMINATION:**

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of three (3) years. Following the initial term and at the sole option of CITY, this Agreement may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
  - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
  - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
    - 1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
    - 2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
    - 3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
    - 4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.

iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.

**C. Termination By SUPPLIER.** SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.

**D. Cooperation.** Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.

**E. Survivability.** The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES.**

##### **A. SUPPLIER represents and warrants the following:**

i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.

ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.

iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.

iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.

v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.

vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.

**B.** Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.

- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

**5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.**

- A. **Indemnification.** SUPPLIER shall indemnify, hold harmless and defend CITY from and against any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of SUPPLIER, its agents, servants, officers, officials, employees, or subcontractors. CITY reserves its rights to be represented in any such action by its own counsel at its own expense. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein. In addition, in claims against any person or entity indemnified under this Section by an employee of SUPPLIER or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for SUPPLIER or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive any termination or expiration of this Agreement.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

**6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.**

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
- B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
- C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.

- 7. **ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. **AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.



- 9. AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.
- 10. CHOICE OF LAW/JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.
- 11. COMPLIANCE WITH LAWS.** SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:
- A. Discrimination/ADA.** SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.
- B. Drug Free Workplace.** SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.
- C. Immigration.** CITY shall not intentionally award publicly-funded contracts to any SUPPLIER 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)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.
- D. Scrutinized Companies.** Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.
- E. Contractor Preference.** Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:
- a. The Contractor's political opinions, speech, or affiliations;
  - b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
  - c. The Contractor's lawful ownership of a firearm;
  - d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
  - e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
  - f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
  - g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
  - h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company

employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

**F. Conflict of Interest.**

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.

**G.** Violation of this Section shall be considered as justification for immediate termination of this Agreement.

**12. CONTRACT DOCUMENTS.** The ITB and all submissions prepared by SUPPLIER in response to the ITB are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

**13. ENFORCEABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

**14. ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

**15. E-VERIFY REGISTRATION AND USE.** Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all

subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

**16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.

**17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.

**18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

**19. MOST FAVORED CUSTOMER.** SUPPLIER warrants and represents that all terms, including prices, charges, benefits and warranties, in this Agreement are at least as or more favorable than any terms that SUPPLIER has offered to any other person or entity, for the types of Services covered by this Agreement. If at any time during this Agreement SUPPLIER shall offer any other person or entity terms more favorable, SUPPLIER shall promptly notify CITY of such more favorable terms, and if such more favorable terms were offered by SUPPLIER to another person or entity CITY shall immediately receive the benefit of the more favorable terms for the remainder of this Agreement, including any renewals thereof, as well as retroactively to the effective date such more favorable terms were offered by SUPPLIER. Upon CITY'S request, SUPPLIER shall advise CITY in writing, executed by an officer of SUPPLIER, that this section has not been contradicted by SUPPLIER since the later of (i) the Effective Date of this Agreement or (ii) the date of the most recent notice provided by SUPPLIER pursuant to this section.

**20. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

**FOR CITY:**  
The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR SUPPLIER:**  
Joe Williams  
Joe Dirt, Inc.  
2745 Long Road  
St. Augustine, Florida 32084

**21. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.

**22. PUBLIC RECORDS LAW.**

**A.** The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or

received by the Parties. If SUPPLIER is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:

- i. Keep and maintain all public records required by CITY to perform the Services herein; and
  - ii. Upon request from CITY’S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
  - iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY’S custodian of public records, in a format compatible with the information technology systems of CITY.
- B.** All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney’s fees through any appeals, resulting from SUPPLIER’S failure to comply with these requirements.
- c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK’S OFFICE AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**23. SEVERABILITY.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

**24. SUBCONTRACTORS.** In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY’S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER’S duties commensurately with SUPPLIER’S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.

**25. WAIVER.** The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

**JOE DIRT, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Print: Denise Bevan

Print Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits**

- A - Work Order Template Form
- B - Insurance Requirements
- C - Price Schedule

Exhibit A - Work Order Template Form



Work Order # \_\_\_\_\_ PO# \_\_\_\_\_ Project Mgr. \_\_\_\_\_  
name

SUPPLIER NAME: \_\_\_\_\_

Contract Project Title \_\_\_\_\_ Work Order Project Title \_\_\_\_\_

Contract Bid # \_\_\_\_\_ Work Order Bid # \_\_\_\_\_

Contract Resolution # \_\_\_\_\_ Work Order Resolution # \_\_\_\_\_

TOTAL COST: \$ \_\_\_\_\_

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated \_\_\_\_\_, \_\_\_\_\_ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): \_\_\_\_\_ FIXED FEE/LUMP SUM \_\_\_\_\_ UNIT BASED/ NOT TO EXCEED\*
3. **PRICING** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): \_\_\_\_\_ AS NEEDED BASIS \_\_\_\_\_ SHALL BE COMPLETED BY - \_\_\_\_/\_\_\_\_/20\_\_\_\_
5. **DESCRIPTION OF SERVICES** (chose one): \_\_\_\_\_ ATTACHED \_\_\_\_\_ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, identify: \_\_\_\_\_
7. **MISCELLANEOUS:** \_\_\_\_\_
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

SUPPLIER APPROVAL

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY APPROVAL

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Assistant City Manager or Designee

Date: \_\_\_\_\_

BPO Use Only:

Req # \_\_\_\_\_

Requisition Creator \_\_\_\_\_  
name

Select one: \_\_\_\_\_ New PO \_\_\_\_\_ Increase to Existing/ P.O. Adjustment

**EXHIBIT B**  
**Insurance Requirements**

**1. GENERAL.**

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

**2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. 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, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY 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 SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum

requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**  
 \$500,000.00 (Each Accident)  
 \$500,000.00 (Disease-Each Employee)  
 \$500,000.00 (Disease-Policy Limit)

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

	LIMITS
General Aggregate (per project greater)	\$2,000,000.00 or 2x Per Occurrence (whichever is greater)
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

	LIMITS
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00

**3.4. Professional Liability:** SUPPLIER 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 SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.



**EXHIBIT C  
Price Schedule**

**(See attached)**

**PRICE SCHEDULE**

Joe Dirt, Inc.  
\_\_\_\_\_  
**Company Name of Bidder**  
2745 Long Rd.  
\_\_\_\_\_  
**Mailing Address**  
St. Augustine, FL 32084  
\_\_\_\_\_  
**City, State, Zip**  
wshecky@yahoo.com                      904-806-0187  
\_\_\_\_\_  
**email**    **Phone**

**Price in US Dollars:** \$ 849.50 / load

**Price written out:** eight-hundred forty-nine dollars and fifty cents / load

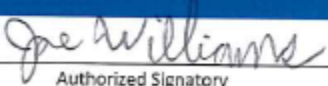
*Prices shall include all applicable taxes.*

If this project involves improvements to City Property, and the value of the contract will be greater than \$200,000, Bidder is required to provide Payment and Performance bonds in compliance with Section 255.05 Florida Statutes. If applicable, please provide the price of the bonds here:

**Bond Price in US Dollars:** \$ \_\_\_\_\_

**Bond Price written out:** \_\_\_\_\_

Pursuant to and in compliance with the Invitation To Bid, and the other documents relating thereto, the undersigned Bidder, having familiarized himself/herself with the terms of the Contract Documents, local conditions affecting the performance of the work, and the cost of the work at the places where the work is to be done, hereby proposes and agrees to deliver materials/services in a workmanlike manner and in strict conformity with Invitation to Bid requirements, including any addenda, and Contract Documents, for the amount set forth above.

 _____ Authorized Signatory	<u>8/25/23</u> _____ Date
<u>Joe Williams</u> _____ Name	
<u>President</u> _____ Title	

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b>	WATER AND WASTEWATER UTILITY	<b>Amount</b>	\$237,000.00																								
<b>Division</b>		<b>Account #</b>	54019084-052030																								
<b>Subject:</b>	RESOLUTION 2023-XX APPROVING PIGGYBACKING MOMAR, INC., WITH JEA (JACKSONVILLE ELECTRIC AUTHORITY) CONTRACT FOR THE PURCHASE OF BULK GLYCERIN																										
<b>Presenter:</b>	Danny Ashburn, Utility Systems Manager																										
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>1. Resolution</li> <li>2. Piggyback Contract</li> </ul>																										
<b>Background:</b>	<p><b>Council Priority:</b> <b>D. Sustainable Environment and Infrastructure</b></p> <p>As part of the standard operations at Wastewater Treatment Plants, the city utilizes glycerin for the biological process. Staff desires to purchase bulk glycerin from Momar, Inc., to be used at Wastewater Treatment Plant 2 on an as needed basis. This chemical is used as a supplementary carbon source necessary to regulate the Total Nitrogen in the plant process to meet permit limits and protect the health and safety of the residents. Estimated usage of this chemical for 2023 is 100,000 gallons at \$2.37 per gallon.</p> <p>City staff is recommending piggybacking the Momar, Inc., Contract (RFP #11570) with Jacksonville Electric Authority (JEA), for the purchase of bulk glycerin for use at Wastewater Treatment Plant 2. Piggybacking existing competitively bid contracts is advantageous since the pricing is generally better than what the City could obtain on its own, and the City does not incur the expense and delay of soliciting a bid.</p> <p>Since the underlying contract is an agreement on a per unit price basis, City staff will make purchases on an as needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2024 Budget includes available funding in the City's Wastewater Treatment Plant 2 Operating budget under chemicals. City staff estimate that the City will expend approximately \$237,000.00 annually under this piggyback contract.</p>																										
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="4"><b>SOURCE OF FUNDS WORKSHEET FY 2024</b></td> </tr> <tr> <td style="width: 15%;"><b>Wastewater Treatment Plant 2- Chemicals 54019084-052030</b></td> <td style="width: 40%;"></td> <td style="width: 15%;"></td> <td style="width: 30%; text-align: right;"><b>\$675,500.00</b></td> </tr> <tr> <td>Total Expended/Encumbered to Date</td> <td></td> <td></td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Pending Work Orders/Contracts</td> <td></td> <td></td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Current (WO/Contract)</td> <td></td> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$237,000.00</td> </tr> <tr> <td><b>Balance</b></td> <td></td> <td></td> <td style="text-align: right;"><b>\$438,500.00</b></td> </tr> </table>			<b>SOURCE OF FUNDS WORKSHEET FY 2024</b>				<b>Wastewater Treatment Plant 2- Chemicals 54019084-052030</b>			<b>\$675,500.00</b>	Total Expended/Encumbered to Date			\$0.00	Pending Work Orders/Contracts			\$0.00	Current (WO/Contract)			\$237,000.00	<b>Balance</b>			<b>\$438,500.00</b>
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Current (WO/Contract)			\$237,000.00																								
<b>Balance</b>			<b>\$438,500.00</b>																								

**Recommended Action:**

**ADOPT RESOLUTION 2023-XX APPROVING PIGGYBACKING MOMAR INC., WITH JEA (JACKSONVILLE ELECTRIC AUTHORITY) CONTRACT FOR THE PURCHASE OF BULK GLYCERIN**

**RESOLUTION 2023 -  
PIGGYBACKING MOMAR, INC.,  
WITH JACKSONVILLE ELECTRIC AUTHORITY (JEA) FOR  
THE PURCHASE OF BULK GLYCERIN**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING MOMAR, INC., WITH JACKSONVILLE ELECTRIC AUTHORITY (JEA) FOR THE PURCHASE OF BULK GLYCERIN; 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, Momar, Inc., has expressed a desire to provide bulk glycerin to the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to approve piggybacking the Jacksonville Electric Authority contract with Momar, Inc., for the purchase of bulk glycerin.

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

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

**SECTION 2. APPROVAL OF PIGGYBACK.** The City Council of the City of Palm Coast hereby approves piggybacking the contract between Momar, Inc., and Jacksonville Electric Authority, for the purchase of bulk glycerin as attached hereto and incorporated herein by reference as Exhibit "A."

**SECTION 3. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**SECTION 4. 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 5. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 6. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 7. 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 3<sup>rd</sup> day of October 2023.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachment: Exhibit A - Contract with Momar, Inc.

BPO Mgr. Approval

DS  
JR



**CONTRACT EXECUTIVE OVERVIEW**

Vendor Name: MOMAR, INC.

Bid/Contract Ref # CONTRACT #11570 SOLICITATION #1411309646

Agency Name: JACKSONVILLE ELECTRIC AUTHORITY (JEA)

Contract Type: PIGGYBACK

Contract Value OVER \$50K

Resolution # 2023- City Council Approval Date: \_\_\_\_\_

Contract Term End Date JULY 26, 2026

Renewable Y/N YES If yes # and length of renewals: Two (2) each one (1) year renewals

City's Project Manager(s) Danny Ashburn

**Brief Description/Purpose:**

To utilize the terms, conditions, scope and pricing of the JEA Agreement for Continuing Services for Bulk Glycerin Supply and Delivery services as needed.

\_\_\_\_\_  
\_\_\_\_\_

**Approvals:**

Responsible Dept. Director \_\_\_\_\_ Date: \_\_\_\_\_

City Finance \_\_\_\_\_ Date: \_\_\_\_\_

City Attorney \_\_\_\_\_ Date: \_\_\_\_\_

City Manager \_\_\_\_\_ Date: \_\_\_\_\_

Vendor Name and Email Robert Beck bob.beck@momar.com



# City of PALM COAST

**Finance Department**  
Budget & Procurement Office

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

MOMAR, INC.  
Robert Beck  
1830 Ellsworth Industrial Drive NW  
Atlanta, GA 30318

RE: Engagement Letter Authorizing Piggyback

CONTINUING SERVICES FOR BULK GLYCERIN SUPPLY & DELIVERY

Contract Name

JEA Contract 11570 Solicitation 1411309646

Contract Reference

Dear Robert,

The City of Palm Coast, Florida requests permission to utilize your company's above referenced contract in accordance with its terms and conditions and pricing. If agreed, please indicate approval by electronically signing below as well as the Addendum covering the E-Verify and Public Records requirements.

All invoices should be sent via email to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com). If email is not possible, please mail invoices to: City of Palm Coast, Attn: Accounts Payable, 160 Lake Avenue, Palm Coast, Florida 32164. All legal notices should be sent to the attention of the City Manager at the same address.

Please feel free to contact me at the email address below if you have any questions.

Regards,

*Jesse K. Scott*

Jesse K. Scott  
Procurement Coordinator  
jkscott@palmcoastgov.com

**This Engagement Letter is hereby acknowledged and agreed to:**

**CITY OF PALM COAST**

By: \_\_\_\_\_

**MOMAR, INC.**

DocuSigned by:

By: *Julian Mohr, Jr.* \_\_\_\_\_

4693776105142 (Authorized Signatory)

Print: Denise Bevan

Title: City Manager

Date: \_\_\_\_\_

Print Name: Julian Mohr, Jr.

Title: CEO, Momar

Date: Aug 28, 2023 | 1:41 PM EDT



**ENGAGEMENT LETTER ADDENDUM****1. E-Verify Registration and Use.**

- A. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, SUPPLIER shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all SUPPLIER employees hired on and after January 1, 2021.
- B. Subcontractors
- (i) SUPPLIER shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.
- (ii) SUPPLIER shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.
- (iii) SUPPLIER shall maintain a copy of all subcontractor affidavits for the duration of this Agreement and provide it to CTIY upon request.
- C. SUPPLIER must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the SUPPLIER stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system.
- D. Failure to comply with this provision is a material breach of the Agreement, and shall result in the immediate termination of the Agreement without penalty to CITY. SUPPLIER shall be liable for all costs incurred by CITY to secure a replacement agreement, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

**2. Public Records.**

- A. The Parties specifically acknowledge that the Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, SUPPLIER shall:
- i. Keep and maintain all public records required by CITY to perform the Services herein; and
- ii. Upon request from CITY's custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
- iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.
- B. All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.



**C. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE, AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**CITY OF PALM COAST**

**MOMAR, INC.**

By: \_\_\_\_\_

Print: Denise Bevan

Title: City Manager

Date: \_\_\_\_\_

DocuSigned by:

*Julian Mohr, Jr.* \_\_\_\_\_

(Authorized Signatory)

469377EFD651442  
Print Name: Julian Mohr, Jr. \_\_\_\_\_

Title: CEO, Momar \_\_\_\_\_

Date: Aug 28, 2023 | 1:41 PM EDT \_\_\_\_\_

In Process

**CONTINUING SERVICES FOR BULK GLYCERIN SUPPLY AND DELIVERY**

**CONTRACT  
BETWEEN  
JEA  
AND  
MOMAR, INC.  
JEA CONTRACT # 11570**

**THIS CONTRACT** is made and entered into as of the 27th day of July, 2023 (the “**Effective Date**”) by and between **JEA**, a body politic and corporate in the City of Jacksonville, Florida (“**JEA**”) and **MOMAR, INC.**, a Georgia corporation authorized to conduct business in the state of Florida with its principal address at 1830 Ellsworth Industrial Drive NW, Atlanta, Georgia, 30318, United States (“**Company**”).

**WHEREAS**, JEA issued Solicitation No. **1411309646** for "**CONTINUING SERVICES FOR BULK GLYCERIN SUPPLY AND DELIVERY**", as amended by Addendum Number One dated July 20, (the “**Solicitation**”); and

**WHEREAS**, based on Company’s response to the Solicitation (the “**Response**”), on **July 27, 2023**, JEA informally awarded a contract, as allowed by Article 3-102 of the JEA Procurement Code, to Company to provide certain services to JEA as described in the Solicitation (the “**Work**”);

**NOW THEREFORE**, in consideration of the mutual covenants contained below, JEA and Company agree as follows:

**1. Engagement and Performance of Work.** JEA engages Company to perform the Work, and Company shall perform the Work in accordance with the terms and conditions of this Contract.

**2. Compensation.** JEA shall pay the Company for the Work in accordance with the terms of the Solicitation and the pricing attached to this Contract as **Exhibit A**.

**3. Maximum Indebtedness.** JEA’s maximum indebtedness for all fees, costs, expenses and all other amounts payable under this Contract shall be a fixed monetary amount not-to-exceed **Four Hundred Seventy Five Thousand Four Hundred Forty Six and 00/100 (\$475,446.00)**, and JEA’s annual spend under this Contract shall not exceed the \$300,000.00 unless otherwise amended. All amounts payable under this Contract are contingent upon the existence of lawfully appropriated funds therefor.

**4. Term.** The term of this Contract shall commence on the Effective Date and shall continue through **July 26, 2026**, unless sooner terminated in accordance with the terms of the Solicitation. JEA shall have the right, in its sole discretion, to renew this Contract for up to two (2) additional terms of one (1) year each.

5. **Contract Documents.** This Contract consists of the following documents which are incorporated by reference as if fully set forth herein and which, in case of conflict, shall have priority in the order listed below:

- This document (including all attachments and exhibits hereto), as modified by any subsequently signed amendments
- Any Addenda to the Solicitation issued by JEA
- The Solicitation as originally issued by JEA, including all amendments, technical specifications, appendices and exhibits thereto
- JEA Purchase Order
- The Response, provided, however, that any terms in the Response that are inconsistent with the Solicitation shall not be included in this Contract, unless expressly agreed to in writing by JEA

6. **Additional Provisions.** Section 2.7 of the Solicitation is deleted in its entirety and replaced with the following provision:

The index referred to herein shall be the Consumer Price Index for All Urban Consumers Series ID: CUUR0000SA0 (the “CPI”)

Contract prices (also referred to as “Unit Prices”) for the Work will remain fixed through the first year of the Contract. Thereafter, the Company may request a CPI increase annually. Each request for a price adjustment must be made within thirty days of the Contract’s Anniversary Date and will be calculated as shown below. When a timely price adjustment request is received, JEA will recognize the price adjustment in the renewal Contract Amendment. No retroactive price adjustments will be allowed. The index used will be the unadjusted percent change since the contract effective month, or last price adjustment.

JEA also reserves the right to decrease the Unit Prices if justified by the CPI during the renewal period.

Price Increase/Decrease Formula =  $((\text{Latest CPI Index} - \text{Base CPI Index}) / \text{Base 12 CPI Index}) \times 100 = \text{Percent Change (\%)} \text{ (rounded to thousandth of a percent)}$

7. **Additional Provisions.** Section 2.19 of the Solicitation is deleted in its entirety and replaced with the following provision:

The Contract shall commence on the effective date of the Contract and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for three years.

JEA may renew the Contract in its sole discretion for two additional one-year periods.

The Contract shall be contingent upon the existence of lawfully appropriated funds for the Contract. Certain provisions of the Contract may extend past termination including, but not limited to, Warranty and Indemnification provisions

8. **Notices.**

All notices under this Contract shall be in writing and shall be delivered by email (delivery receipt requested), certified mail (return receipt requested), or by other delivery with receipt to the following:

As to JEA:

JEA  
225 N. Pearl Street  
Jacksonville, Florida 32202  
Attn: Randy J. Ellis  
Email: ellirj@jea.com

and to:

JEA  
225 N. Pearl Street  
Jacksonville, Florida 32202  
Attn: Heather Beard, Procurement Contract Administration  
bearhb@jea.com

As to the Company:

Momar, Inc.  
1830 Ellsworth Industrial Drive NW  
Atlanta, Georgia 30318  
Attn: Robert Beck  
Email: bob.beck@momar.com

9. **Authority.** Company represents and warrants to JEA that Company has full right and authority to execute and perform its obligations under this Contract, and Company and the person(s) signing this Contract on Company's behalf represent and warrant to JEA that such person(s) are duly authorized to execute this Contract on Company's behalf without further consent

or approval by anyone. Company shall deliver to JEA promptly upon request all documents reasonably requested by JEA to evidence such authority.

**10. Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Work to be performed and furnished by the Company. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. Company may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to JEA (e.g., “shrink wrap” terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. Company acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

**9. Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties to this Contract.

**10. Counterparts.** This Contract, and all amendments hereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. This Contract may be delivered by facsimile or by email transmittal of a PDF image, and such facsimile or PDF counterparts shall be valid and binding on JEA and Company with the same effect as if original signatures had been exchanged.

**[Remainder of page left blank intentionally. Signature page follows immediately.]**

**IN WITNESS WHEREOF**, JEA and Company have duly executed this Contract as of the Effective Date.

**JEA:**

JEA

Signature:



Signed on Aug 14,2023 | 14:52:58 (GMT -5:00)

**WITNESS:**

JEA

Signature:



Signed on Aug 14,2023 | 15:06:22 (GMT -5:00)

---

**Email:** gleejs@jea.com  
**Name:** Jenny G. McCollum  
**Title:** Director Procurement Services  
**Date:** Aug 14,2023 | 14:52:58 (GMT -5:00)

---

**Email:** sextte@jea.com  
**Name:** Terri Sexton  
**Title:** Contract Associate  
**Date:** Aug 14,2023 | 15:06:22 (GMT -5:00)

**COMPANY:**

In Process

Momar, Inc.

Signature:



Signed on Aug 13,2023 | 10:37:46 (GMT -5:00)

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**Email:** julian.mohr.jr@momar.com  
**Name:** Julian Mohr, Jr.  
**Title:** President  
**Date:** Aug 13,2023 | 10:37:46 (GMT -5:00)

**FORM APPROVED:**

### EXHIBIT A

Appendix B - Bid Forms  
 1411309646 Continuing Services for Bulk Glycerin Supply and Delivery

Submit the Bid electronically as described in the Solicitation.

Company Name: Momar Inc  
 Company's Address: 1830 Ellsworth Industrial Dr. Atlanta, GA. 30318  
 License Number: \_\_\_\_\_  
 Phone Number: 203-725-8082 FAX No: N/A Email Address: bob.beck@memar.com

<b>BID SECURITY REQUIREMENTS</b> <input checked="" type="checkbox"/> None required <input type="checkbox"/> Certified Check or Bond (Five Percent (5%))		<b>TERM OF CONTRACT</b> <input type="checkbox"/> One Time Purchase <input checked="" type="checkbox"/> Annual Requirements - Five (5) years, Two (2) Optional One (1) year Renewals <input type="checkbox"/> Other, Specify - Project Completion	
<b>SAMPLE REQUIREMENTS</b> <input checked="" type="checkbox"/> None required <input type="checkbox"/> Samples required prior to Bid Opening <input type="checkbox"/> Samples may be required subsequent to Bid Opening		<b>SECTION 255.05, FLORIDA STATUTES CONTRACT BOND</b> <input checked="" type="checkbox"/> None required <input type="checkbox"/> Bond required 100% of Bid Award	
<b>QUANTITIES</b> <input type="checkbox"/> Quantities indicated are exacting <input checked="" type="checkbox"/> Quantities indicated reflect the approximate quantities to be purchased Throughout the Contract period and are subject to fluctuation in accordance with actual requirements.		<b>INSURANCE REQUIREMENTS</b> Insurance required	
<b>PAYMENT DISCOUNTS</b> <input type="checkbox"/> 1% 20, net 30 <input type="checkbox"/> 2% 10, net 30 <input type="checkbox"/> Other _____ <input checked="" type="checkbox"/> None Offered			

Item No.	ENTER YOUR BID FOR THE FOLLOWING DESCRIBED ARTICLES OR SERVICES	Estimated Five (5) Year Quantity	Unit Price / Gallon	TOTAL BID PRICE
1	Delivery of Glycerin per the Technical specification (freight included)	1,926,600 gallons	\$ 2.37	\$ 4,566,042

I have read and understood the Sunshine Law/Public Records clauses contained within this solicitation. I understand that in the absence of a redacted copy my proposal will be disclosed to the public "as-is".

**BIDDER CERTIFICATION**

By submitting this Bid, the Bidder certifies that it has read and reviewed all of the documents pertaining to this Solicitation, that the person signing below is an authorized representative of the Bidding Company, that the Company is legally authorized to do business in the State of Florida, and that the Company maintains in active status an appropriate contractor's license for the work (if applicable). The Bidder also certifies that it complies with all sections (including but not limited to Conflict Of Interest and Ethics) of this Solicitation.

We have received addenda \_\_\_\_\_ through \_\_\_\_\_

Robert Beck 7/23/23  
 Handwritten Signature of Authorized Officer of Company or Agent Date

Robert Beck VP  
 Printed Name and Title

# CERTINAL eSign

## Final Audit Report

Contract number JEA11570, titled Continuing Services for Bulk Glycerin Supply and Delivery

### Audit Summary for Contract number JEA11570, titled Continuing Services for Bulk Glycerin Supply and Delivery

<b>Report Time</b> 08/14/2023   19:06:31 (GMT)	<b>Agreement Name</b> Contract number JEA11570, titled Continuing Services for Bulk Glycerin Supply and Delivery	<b>Document Created Time</b> 08/11/2023   21:32:14 (GMT)
<b>Document Created By</b> Terri Sexton (sextte@jea.com)	<b>Document Sent Time</b> 08/11/2023   21:32:14 (GMT)	<b>Transaction ID</b> 9a39e0d3-b8e5-4fb8-b223-1e77b20ae3b8
<b>Documents</b> 1691789463479.pdf	<b>Recipients</b> Julian Mohr, Jr. (julian.mohr.jr@momar.com), Jenny G. McCollum (gleejs@jea.com), Terri Sexton (sextte@jea.com)	<b>Document Status</b> Completed
<b>Document Status Action Time</b> 08/14/2023   19:06:31 (GMT)	<b>Number of Signatures</b> 3	<b>Number of Initials</b> 0
<b>Number of Stamps</b> 0	<b>Number of Pages in Document</b> 6	<b>CC Users</b>

### Audit Events

- Document created by Terri Sexton (sextte@jea.com) via API integration user Heather Beard (bearhb@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/11/2023   21:32:14 (GMT)	207.211.63.71	-	-	Other null

- Document emailed by julian.mohr.jr@momar.com (Terri Sexton) via API integration user sextte@jea.com (Heather Beard)  
Sent to - Julian Mohr ( Jr.)

Time	IP Address	Geolocation	Browser	OS
08/11/2023   21:32:20 (GMT)	-	-	-	-

- Email link authenticated by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/13/2023   14:36:54 (GMT)	73.54.128.20	-	Mobile Safari null	iOS 16

- Document viewed by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/13/2023   14:36:55 (GMT)	73.54.128.20	-	Mobile Safari null	iOS 16



- Certinal eSign Terms of Use, User Disclosure and Privacy Policy associated with this document have been agreed by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/13/2023   14:37:46 (GMT)	73.54.128.20	-	Mobile Safari null	iOS 16

- Document eSigned by Julian Mohr, Jr. ( Jr.)  
Signature Method - julian.mohr.jr@momar.com  
Apply this Signature at all places: Signature Typed

Time	IP Address	Geolocation	Browser	OS
08/13/2023   14:37:46 (GMT)	73.54.128.20	-	Mobile Safari null	iOS 16

- Document emailed  
Sent to - Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/13/2023   14:37:57 (GMT)	-	-	-	-

- Email link authenticated by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   17:50:14 (GMT)	12.89.165.30	-	Edge 115	Windows 10

- Document viewed by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   17:50:14 (GMT)	12.89.165.30	-	Edge 115	Windows 10

- PDF agreement downloaded by Julian Mohr, Jr. (julian.mohr.jr@momar.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   17:50:27 (GMT)	12.89.165.30	-	Edge 115	Windows 10

- Reminder mail sent to Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:48:05 (GMT)	-	-	-	-

- Email link authenticated by Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:24 (GMT)	12.139.123.91	-	Edge 114	Windows 10

- Document viewed by Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:25 (GMT)	12.139.123.91	-	Edge 114	Windows 10

- Email link authenticated by Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:27 (GMT)	3.226.33.155	-	Edge 114	Windows 10

- Document viewed by Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:27 (GMT)	3.226.33.155	-	Edge 114	Windows 10

- Certinal eSign Terms of Use, User Disclosure and Privacy Policy associated with this document have been agreed by Jenny G. McCollum (gleejs@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:58 (GMT)	12.139.123.91	-	Edge 114	Windows 10

- Document eSigned by Jenny G. McCollum (gleejs@jea.com)  
Signature Method - Signature Drawn (Pre-Saved)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:52:58 (GMT)	12.139.123.91	-	Edge 114	Windows 10

- Document emailed  
Sent to - Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   18:53:09 (GMT)	-	-	-	-

- Email link authenticated by Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:05:54 (GMT)	12.139.123.251	-	Edge 114	Windows 10

- Document viewed by Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:05:56 (GMT)	12.139.123.251	-	Edge 114	Windows 10

- Email link authenticated by Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:06:06 (GMT)	44.210.46.59	-	Edge 114	Windows 10

- Document viewed by Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:06:06 (GMT)	44.210.46.59	-	Edge 114	Windows 10

- Certinal eSign Terms of Use, User Disclosure and Privacy Policy associated with this document have been agreed by Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:06:22 (GMT)	12.139.123.251	-	Edge 114	Windows 10

- Document eSigned by Terri Sexton (sextte@jea.com)  
Signature Method - Signature Typed (Pre-Saved)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:06:22 (GMT)	12.139.123.251	-	Edge 114	Windows 10

- Final Agreement Emailed  
Sent to - Julian Mohr  
Jr. (julian.mohr.jr@momar.com)  
Jenny G. McCollum (gleejs@jea.com)  
Terri Sexton (sextte@jea.com)

Time	IP Address	Geolocation	Browser	OS
08/14/2023   19:06:31 (GMT)	-	-	-	-

In Process

End of Report

## Sender Assigned Fields To Recipients

Recipient	Field	Required	PDF Page No.	Value	Activity Time
Julian Mohr, Jr. (julian.mohr.jr@momar.com)	Field Type: Signature	Yes	Page No.:5	<i>Julian Mohr, Jr.</i> Signed on Aug 13,2023   10:37:46 (GMT -5:00)	08/13/2023   14:37:51 (GMT)
Julian Mohr, Jr. (julian.mohr.jr@momar.com)	Field Type: Signed Date	Yes	Page No.:5	Aug 13,2023   10:37:46 (GMT -5:00)	08/13/2023   14:37:51 (GMT)
Jenny G. McCollum (gleejs@jea.com)	Field Type: Signature	Yes	Page No.:5	<i>JG McCollum</i> Signed on Aug 14,2023   14:52:58 (GMT -5:00)	08/14/2023   18:53:04 (GMT)
Jenny G. McCollum (gleejs@jea.com)	Field Type: Signed Date	Yes	Page No.:5	Aug 14,2023   14:52:58 (GMT -5:00)	08/14/2023   18:53:04 (GMT)
Terri Sexton (sextte@jea.com)	Field Type: Signature	Yes	Page No.:5	<i>Terri Sexton</i> Signed on Aug 14,2023   15:06:22 (GMT -5:00)	08/14/2023   19:06:28 (GMT)
Terri Sexton (sextte@jea.com)	Field Type: Signed Date	Yes	Page No.:5	Aug 14,2023   15:06:22 (GMT -5:00)	08/14/2023   19:06:28 (GMT)

# In Process

Parties accepted the User Disclosure: Julian Mohr, Jr. (julian.mohr.jr@momar.com), Jenny G. McCollum (gleejs@jea.com), Terri Sexton (sextte@jea.com)

## Company and its Users' Disclosure Regarding Conducting Business Electronically, and Signing Documents Electronically

By using Certinal Application, you hereby specifically provide your consent to use Certinal Application for receiving notifications electronically and/or electronically signing e-documents rather than executing those documents through wet signatures. If you do not wish to receive notifications electronically and/or execute e-documents by applying electronic signatures, then you may withdraw your consent in following manner:

- You may notify the sender by writing email to the sender of e-document that you do not wish to execute e-documents by applying electronic signatures.
- You may write email to the sender of e-document and ask the sender to provide print of the document for executing the same by applying wet signatures.
- You yourself may download the document from Certinal Application and print the same for executing it by applying wet signatures.

Any such action of yours by which you do not proceed to electronically sign e-documents shall be construed as withdrawal of your consent to electronically sign e-documents.

You may be required to pay to the sender for executing hard copy of the document through wet signatures needs to be settled between you and the sender. Certinal is not liable in any manner whatsoever related to any such cost if any incurred by you.

After withdrawal of such consent if at any time in future you again use the Certinal Application either to electronically sign the same document for which you had earlier withdrawn your consent or you use the Certinal Application to sign any other new document then by such act of yours you acknowledge that you are consenting to use Certinal Application for electronically signing e-documents.

Following are the system requirements for using Certinal Application.

System Requirements	
<b>RAM Requirements</b>	Minimum: 8GB Recommended: 16GB
<b>Hard Disk Requirements</b>	100GB
<b>Supported Operating system</b>	MAC OS X v11 or later and Windows 8, 10
<b>Supported Browser</b>	<i>*Edge Chromium based browser Recommended Edge Version 81.0.416.58 + Firefox Version 75.0 + Chrome 78.0.3904.97 + Safari 11 +</i>
<b>System Resolution</b>	1920*1080, 1024*768, 1152*864, 1366*768, 1440x900, 2560*1600, 3072*1920
<b>Additional Hardware/Software Requirements</b>	4 Cores (CPU)

Please note that Edge Chromium based browser, Firefox, and Chrome are evergreen browsers with automatic updates. Support is provided for two of their latest stable releases. The supported versions will change as and when they release a new version.

Following are the document formats supported for electronic signature.

- PDF (.pdf)
- Word (.doc and .docx)
- Graphics (.tif, .jpg, .jpeg, .gif, .bmp, and .png)

You are required to have Acrobat® or similar software applications to view electronically signed document.

# In Process

### E-Verify Affidavit Instructions

Beginning January 1, 2021, pursuant to Section 448.095 Florida Statutes, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-verify system.

1. Please create an Affidavit on your company's letter head in a similar form to that attached below.
2. Have it signed and notarized.
3. Then attach the notarized affidavit and the proof of registration where indicated.

In Process

ATTACH NOTARIZED AFFIDAVIT HERE



ATTACH PROOF OF REGISTRATION HERE



### CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that \_\_\_\_\_ *[insert contractor company name]* does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy of \_\_\_\_\_ *[insert contractor company name]* proof of registration in the E-Verify system is attached to this Affidavit.

In Process

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ *[name of officer or agent, title of officer or agent]* of \_\_\_\_\_ *[name of contractor company acknowledging]*, a \_\_\_\_\_ *[state or place of incorporation]* corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ *[type of identification]* as identification.

[Notary Seal]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_






1830 ELLSWORTH INDUSTRIAL DR. NW, ATLANTA, GA 30318  
PH: 800.556.3967 | FX: 800.849.5684  
INFO@MOMAR.COM

### CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that *Momar, INC* does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy of *Momar, INC's* proof of registration in the E-Verify system is attached to this Affidavit.

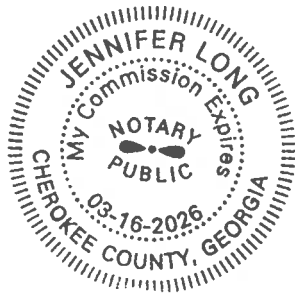
  
Print Name: Julian B. Mohr Jr.  
Title: Chief Executive Officer  
Date: 8/25/23

STATE OF FLORIDA Georgia  
COUNTY OF Fulton

In Process

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 25th day of 2023 by Julian, Mohr Jr. CEO of Momar, Inc., a Georgia corporation, on behalf of the corporation. He is personally known to me or has produced E-Verify Company ID as identification.

[Notary Seal]



  
Notary Public

Jennifer Long  
Name typed, printed, or stamped

My Commission Expires: 3/16/2026



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## THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS

### ARTICLE I PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and Momar, Inc. (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee’s eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, “Employment Eligibility Verification” and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

### ARTICLE II RESPONSIBILITIES

#### A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
  - a. Notice of E-Verify Participation
  - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives’ contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee’s E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.



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4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
  5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
    - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
  6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
    - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
    - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.
- Note:** Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.
7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
  8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the anti-discrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
    - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly



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employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status



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(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at [E-Verify@uscis.dhs.gov](mailto:E-Verify@uscis.dhs.gov). Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon



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reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that [E-Verify trademarks](#) and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

## B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.



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b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin

E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

**Note:** If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with



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Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

### C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

**Note:** If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

### D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and





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b. Photo verification checks (when available) on employees.

2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

## **ARTICLE III REFERRAL OF INDIVIDUALS TO SSA AND DHS**

### **A. REFERRAL TO SSA**

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case.



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The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

## **B. REFERRAL TO DHS**

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the



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employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee’s Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee’s documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

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**ARTICLE IV  
SERVICE PROVISIONS**

**A. NO SERVICE FEES**

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

**ARTICLE V  
MODIFICATION AND TERMINATION**

**A. MODIFICATION**

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.



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**B. TERMINATION**

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer’s participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer’s business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

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**ARTICLE VI  
PARTIES**

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.



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E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.

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**Approved by:**

<b>Employer</b> Momar, Inc.	
<b>Name (Please Type or Print)</b> Pam Hembree	<b>Title</b>
<b>Signature</b> Electronically Signed	<b>Date</b> 04/11/2012
<b>Department of Homeland Security – Verification Division</b>	
<b>Name (Please Type or Print)</b> USCIS Verification Division	<b>Title</b>
<b>Signature</b> Electronically Signed	<b>Date</b> 04/11/2012

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<b>Information Required for the E-Verify Program</b>	
<b>Information relating to your Company:</b>	
<b>Company Name</b>	Momar, Inc.
<b>Company Facility Address</b>	1830 Ellsworth Industrial Drive Atlanta, GA 30318
<b>Company Alternate Address</b>	
<b>County or Parish</b>	FULTON
<b>Employer Identification Number</b>	580524461
<b>North American Industry Classification Systems Code</b>	325
<b>Parent Company</b>	
<b>Number of Employees</b>	100 to 499
<b>Number of Sites Verified for</b>	1 site(s)

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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

GA 1

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Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name ~~Pam Hombree~~  
Phone Number ~~4043554580308~~  
Fax  
Email ~~pam.hombree@momar.com~~

Name Gion Fladger  
Phone Number 4043554580313  
Fax  
Email gion.fladger@momar.com

Name Heather Jamieson  
Phone Number 4043554580347  
Fax  
Email heather.iamieson@momar.com

Name ~~Donna Ray~~  
Phone Number ~~4043554580307~~  
Fax  
Email ~~donna.ray@momar.com~~

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This list represents the first 20 Program Administrators listed for this company.



1830 ELLSWORTH INDUSTRIAL DR. NW, ATLANTA, GA 30318  
PH: 800.556.3967 | FX: 800.849.5684  
INFO@MOMAR.COM

### CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that *Momar, INC* does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy of *Momar, INC's* proof of registration in the E-Verify system is attached to this Affidavit.

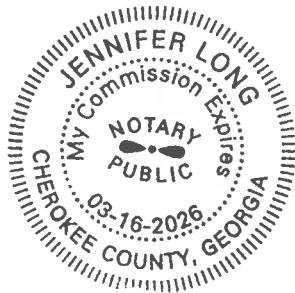
*[Signature]*  
Print Name: Julian B. Mohr Jr.  
Title: Chief Executive Officer  
Date: 8/25/23

STATE OF FLORIDA Georgia  
COUNTY OF Fulton

In Process

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 25th day of 2023 by Julian, Mohr Jr. CEO of Momar, Inc., a Georgia corporation, on behalf of the corporation. He is personally known to me or has produced E-Verify Company ID as identification.

[Notary Seal]



*Jennifer Long*  
Notary Public

Jennifer Long  
Name typed, printed, or stamped

My Commission Expires: 3/16/2026



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## THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS

### ARTICLE I PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and Momar, Inc. (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee’s eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, “Employment Eligibility Verification” and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

### ARTICLE II RESPONSIBILITIES

#### A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
  - a. Notice of E-Verify Participation
  - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives’ contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee’s E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.



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4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
  5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
    - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
  6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
    - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
    - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.
- Note:** Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.
7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
  8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the anti-discrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
    - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly



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employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status



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(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at [E-Verify@uscis.dhs.gov](mailto:E-Verify@uscis.dhs.gov). Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon



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reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that [E-Verify trademarks](#) and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

## B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

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b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin

E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

**Note:** If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with



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Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

### C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

**Note:** If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

### D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and



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- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

## **ARTICLE III REFERRAL OF INDIVIDUALS TO SSA AND DHS**

### **A. REFERRAL TO SSA**

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case.



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The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

## **B. REFERRAL TO DHS**

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the



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employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.
6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee’s Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:
  - a. Scanning and uploading the document, or
  - b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).
7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee’s documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.
8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

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**ARTICLE IV  
SERVICE PROVISIONS**

**A. NO SERVICE FEES**

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

**ARTICLE V  
MODIFICATION AND TERMINATION**

**A. MODIFICATION**

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.
2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.



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## B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

## ARTICLE VI PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.



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E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.

In Process



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**Approved by:**

<b>Employer</b> Momar, Inc.	
<b>Name (Please Type or Print)</b> Pam Hembree	<b>Title</b>
<b>Signature</b> Electronically Signed	<b>Date</b> 04/11/2012
<b>Department of Homeland Security – Verification Division</b>	
<b>Name (Please Type or Print)</b> USCIS Verification Division	<b>Title</b>
<b>Signature</b> Electronically Signed	<b>Date</b> 04/11/2012

In Process





Company ID Number: 542186

<b>Information Required for the E-Verify Program</b>	
<b>Information relating to your Company:</b>	
<b>Company Name</b>	Momar, Inc.
<b>Company Facility Address</b>	1830 Ellsworth Industrial Drive Atlanta, GA 30318
<b>Company Alternate Address</b>	
<b>County or Parish</b>	FULTON
<b>Employer Identification Number</b>	580524461
<b>North American Industry Classification Systems Code</b>	325
<b>Parent Company</b>	
<b>Number of Employees</b>	100 to 499
<b>Number of Sites Verified for</b>	1 site(s)

In Process



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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

GA 1

In Process



Company ID Number: 542186

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name ~~Pam Hombree~~  
Phone Number ~~4043554580308~~  
Fax  
Email ~~pam.hombree@momar.com~~

Name Gion Fladger  
Phone Number 4043554580313  
Fax  
Email gion.fladger@momar.com

Name Heather Jamieson  
Phone Number 4043554580347  
Fax  
Email heather.iamieson@momar.com

Name ~~Donna Ray~~  
Phone Number ~~4043554580307~~  
Fax  
Email ~~donna.ray@momar.com~~

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This list represents the first 20 Program Administrators listed for this company.

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** October 3, 2023

<b>Department</b> CITY ADMINISTRATION <b>Division</b>	<b>Amount</b> <b>Account #</b>
<b>Subject:</b> AGENDA WORKSHEET AND CALENDAR	
<b>Presenter:</b> Kaley Cook, City Clerk	
<b>Attachments:</b> 1. Agenda Worksheet 2. Agenda Calendar	
<b>Background:</b>	
<b>Recommended Action:</b>	

	<b>October 10, 2023 WORKSHOP MEETING</b>	<b>PRESENTER</b>
Presentation	Flagler County Airport	Flagler County Representatives
Resolution	City Hall Modifications	Gebo
Resolution	Community Development Block Grant (CDBG) Cost Feasibility Limits	Gonzalez
Ordinance	Amendment to Solicitation Ordinance	Grossman
Resolution	Parks & Recreation Fee Structure	Hirst
Resolution	Cultural Arts Grants	Hirst
Resolution	Forestar Contract	Smith
	<b>October 10, 2023 SPECIAL WORKSHOP MEETING</b>	<b>PRESENTER</b>
Presentation	Comprehensive Plan Update	Planning
	<b>October 17, 2023 BUSINESS MEETING</b>	<b>PRESENTER</b>
Resolution	Waste Water Treatment Plant Gates for Tanks	Ashburn
Resolution	Piggyback for Sewer Main Rehabilitation	Crawford/Melley
Resolution	Piggyback for Manhole Rehabilitation	Crawford/Melley
Proclamation	Mobility Week	Cook
Proclamation	50th Anniversary of Temple Beth Shalom	Cook
Proclamation	Disability Awareness Month	Cook
Resolution	Master Price Agreement for City-Wide Custom Logo Apparel	Davis
Resolution	Small Business Development Center Services Agreement	DeLorenzo
Resolution	City Hall Modifications	Gebo
Resolution	Community Development Block Grant (CDBG) Cost Feasibility Limits	Gonzalez
Resolution	Parks & Recreation Fee Structure	Hirst
Resolution	Cultural Arts Grant	Hirst
Ordinance 1st	Old Kings Village Rezoning	Hoover
Presentation	Parks Master Plan	McDermott
Ordinance 1st	Old Kings Village Future Land Use Map	Papa
Resolution	Forestar Contract	Smith
	<b>October 24, 2023 SPECIAL WORKSHOP MEETING</b>	<b>PRESENTER</b>
Presentation	Council Policies & Procedures	Borkert
	<b>November 7, 2023 BUSINESS MEETING</b>	<b>PRESENTER</b>
Presentation	Cybersecurity	Akins
Appointment	Vice Mayor Appointment	Cook
Appointment	Council Liaison Appointments	Cook
Ordinance 2nd	Amendment to Solicitation Ordinance	Grossman
Presentation	Citizens Academy Graduation	Kershaw
	<b>November 14, 2023 WORKSHOP MEETING</b>	<b>PRESENTER</b>
Presentation	Economic Development Update	Fiedor
Presentation	Utility Rate Study	Flanagan
Presentation	Community Cats	Grossman
Presentation	Signage	Lens
	<b>November 21, 2023 BUSINESS MEETING</b>	<b>PRESENTER</b>
	<b>December 5, 2023 BUSINESS MEETING</b>	<b>PRESENTER</b>
Ordinance 2nd	Amendment to Solicitation Ordinance	Grossman
Ordinance 2nd	Cascades at Grand Landings Rezoning	Hoover
Ordinance 2nd	Palm Coast Park Master Planned Development	Hoover
Proclamation	Boat Parade	Kershaw
Ordinance 2nd	Cascades at Grand Landings Future Land Use Map	Papa

	<b>December 12, 2023 WORKSHOP MEETING</b>	<b>PRESENTER</b>
Presentation	Budget at a Glance FY 23	Johnston
Presentation	Fire Fleet	Berryhill
Resolution	Residential Study for Speed Limit Posting	Cote
Resolution	Community Development Block Grant (CDBG) Annual Report	Papa/Gonzalez
Resolution	Update to Local Housing Assistance Plan (LHAP)	Papa/Gonzalez
Presentation	Rentals (Air B&B)	Grossman
	<b>December 19, 2023 BUSINESS MEETING</b>	<b>PRESENTER</b>
Ordinance 2nd	Old Kings Village Rezoning	Hoover
Ordinance 2nd	Old Kings Village Future Land Use Map	Papa
Resolution	Community Development Block Grant (CDBG) Annual Report	Papa/Gonzalez
Resolution	Update to Local Housing Assistance Plan (LHAP)	Papa/Gonzalez
	<b>Future</b>	<b>PRESENTER</b>
Resolution	Cigar Lake Effluent Pump Station Filter Upgrades	Ashburn
Resolution	Cleaning and Rehabilitation of Ground Storage Tank at Waste Water Plant 1	Ashburn
Resolution	Reuse Distribution System Filtration Upgrades	Ashburn
Resolution	Above Ground Piping Rehab for Water Treatment Plant 1	Ashburn
Presentation	Fire Suppression Fleet Capital Plan	Berryhill
Resolution	Construction Contract for the Old Kings Road Force Main to Waste Water Treatment Plant 1	Blake
Resolution	Construction Contract for the Water Treatment Plant 1 Generator Project	Blake
Resolution	Construction Contract for the Water Treatment Plant 1 Sludge Dewatering Project	Blake
Resolution	Old Kings Road Design Force Main to Water Treatment Plant 1	Blake
Ordinance	Construction Contract for the Equip Wells SW-1, SW-2 & SW-3 for Water Treatment Plant 1	Blake
Resolution	Supervisor of Elections Interlocal Agreement for 2024 Elections	Cook
Resolution	Construction Contract for Old Kings Road Widening North Phase 2	Cote
Resolution	Matanzas/Bird of Paradise Intersection (Right-of-Way)	Cote
Resolution	Old Kings Road South Phase 2 Study	Cote
Resolution	Old Kings Road South Phase 2 Engineering Design Services	Cote
Resolution	FDOT Agreement for Belle Terre Safety Improvements	Cote
Resolution	FDOT Agreement for Old Kings Road North Phase 2 Widening	Cote
Resolution	FDOT Agreement for Old Kings Road South Phase 2 Study	Cote
Resolution	FDOT Agreement for Matanzas Woods/Palm Coast Parkway Connector Loop Phase 1	Cote
Resolution	Construction Manager Agreement for Matanzas Woods/Palm Coast Parkway Connector Loop	Cote
Resolution	FPL Relocation Agreement for Matanzas Woods/Palm Coast Parkway Connector Loop	Cote
Resolution	Matanzas Woods/Palm Coast Parkway Connector Loop CM Agreement Maximum Price Amendment for Phase 1 Construction	Cote/Blake
Resolution	Matanzas Woods/Palm Coast Parkway Connector Loop Phase 1 Right-of-Way	DeLorenzo
Presentation	Strategic Action Plan - Building and Planning Level of Service	DeLorenzo
Resolution	Utility Rate Study Approval	Flanagan
Resolution	Occupational Services	Fuller
Resolution	FIND Grant Agreement for Waterfront Park Phase 2	Gebo
Resolution	Grant Agreement for Fire Station 26	Gebo
Resolution	Palm Coast Parkway Banners - Childhood Cancer Awareness	Gonzalez
Ordinance 1st	Animal Control Amendment	Grossman
Ordinance	No Smoking Ordinance	Hirst
Resolution	Old Kings Multi Family Master Site Plan Tier 3	Hoover

Resolution	Savannah at Seminole Pointe Master Site Plan Tier 3	Hoover
Ordinance	Colbert Lane Master Plan Development	Hoover
Ordinance	Magnolia Trace Future Land Use Map	Hoover
Ordinance	Magnolia Trace Rezoning	Hoover
Resolution	Whiteview Subdivision Phase 2 Final Plat	Leap/Lens
Resolution	Wireless Communication Facility - 7 Clubhouse Drive	Lens
Resolution	Cell Tower Master Plan Modification	Lens
Resolution	Sawmill Branch Phase 2B	Lens/Leap
Ordinance	Sawmill Branch Phase 6	Lens
Ordinance	Seminole Trails	Lens
Ordinance	Sign Code	Lens
Resolution	Reverie at Palm Coast Phase II	Lens/Leap
Resolution	Hammock at Palm Harbor	Lens/Leap
Resolution	Seminole Palms Phase I	Lens/Leap
Resolution	Colbert Landings Phase I	Lens/Leap
Resolution	Retreat at Town Center Phase II	Lens/Leap
Resolution	Installation Of New and Replacement PEP Tanks	Melley
Resolution	K-Section Drainage Improvements Additional Design	Morales
Resolution	Blare and Colbert Culvert Crossing Upgrades	Morales
Resolution	P-1 Weir Replacement	Morales
Resolution	Grant Agreement for P-1 Weir Replacement	Morales
Ordinance	Dry Lake Rezoning	Nguyen
Resolution	The Station at Town Center - TH - Town Center Tracts 18B & 18C	Nguyen/Lens
Ordinance	Town Center Master Planned Development	Papa
Resolution	Pre-Annexation Agreement for Airport Commons II	Papa
Resolution	Transportation Impact Fee Study	Papa/DeLorenzo
Ordinance	Town Center PUD Amendments	Papa
Resolution	Town Center DRI Amendments	Papa
Resolution	Legacy at Town Center - Tract 18 Technical Site Plan Tier 3	Planning
Resolution	Reverie at Palm Coast Vacation of Easement	Smith





**Meeting Calendar for 10/10/2023 through 12/31/2023**

**10/10/2023 9:00 AM**

City Council Workshop  
City Hall

**10/17/2023 9:00 AM**

City Council  
City Hall

**10/18/2023 5:30 PM**

Planning & Land Development Regulation Board  
City Hall

**10/24/2023 9:00 AM**

City Council Special Workshop  
City Hall

**10/26/2023 5:00 PM**

Beautification and Environmental Advisory Committee  
City Hall

**11/1/2023 10:00 AM**

Code Enforcement Board  
City Hall

**11/7/2023 6:00 PM**

City Council  
City Hall

**11/14/2023 9:00 AM**

City Council Workshop  
City Hall



**Meeting Calendar for 10/10/2023 through 12/31/2023**

**11/15/2023 5:30 PM**

Planning & Land Development Regulation Board  
City Hall

**11/16/2023 5:30 PM**

Citizens' Advisory Task Force  
City Hall

**11/17/2023 8:30 AM**

Volunteer Firefighters' Pension Board  
City Hall

**11/21/2023 9:00 AM**

City Council  
City Hall

**12/5/2023 10:00 AM**

Animal Control Hearing  
City Hall

**12/5/2023 6:00 PM**

City Council  
City Hall

**12/6/2023 10:00 AM**

Code Enforcement Board  
City Hall

**12/7/2023 5:00 PM**

Beautification and Environmental Advisory Committee  
City Hall



## Meeting Calendar for 10/10/2023 through 12/31/2023

**12/12/2023 9:00 AM**

City Council Workshop  
City Hall

**12/19/2023 9:00 AM**

City Council  
City Hall

**12/20/2023 5:30 PM**

Planning & Land Development Regulation Board  
City Hall