



City of Palm Coast Agenda City Council Workshop Meeting

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

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

Tuesday, January 9, 2024

9:00 AM

City Hall - Community Wing

City Staff

Denise Bevan, City Manager

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 PRESENTATIONS

1 PRESENTATION - FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FIVE-YEAR WORK PROGRAM

2 RESOLUTION 2024-XX APPROVING A CONCESSION LEASE AGREEMENT WITH REDEFINED FOOD CO., LLC FOR FOOD AND BEVERAGE CONCESSIONS AT THE SOUTHERN RECREATION CENTER

3 PRESENTATION - STRATEGIC ACTION PLAN EVALUATION UPDATE

4 RESOLUTION 2024-XX APPROVING A CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY

5 PRESENTATION - STRATEGIC ACTION PLAN PRIORITY: AN ANALYSIS OF COMMERCIAL SOLID WASTE HAULING

6 RESOLUTION 2024-XX APPROVING A STATE FIRE MARSHAL GRANT AGREEMENT, ADDITIONAL DESIGN SERVICES, AND DESIGN PHASE EXPENSES FOR THE NEW FIRE STATION 26 AND FIRE STATION 22 REPLACEMENT



- F PUBLIC PARTICIPATION**
Remainder of Public Comments is limited to three (3) minutes each.
- G DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**
- H DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**
- I DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**
- J ADJOURNMENT**

7 AGENDA WORKSHEET AND CALENDAR

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024


Department	COMMUNITY DEVELOPMENT	Amount
Division	PLANNING	Account #
Subject: PRESENTATION - FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FIVE-YEAR WORK PROGRAM		
Presenter: Phong Nguyen, Senior Transportation Planner		
Attachments: 1. Presentation 2. Tentative Five-Year Work Program for Flagler County FY 2024/2025 through 2028/2029		
Background: Council Priority: D. Sustainable Environment and Infrastructure Ms. Katherine Alexander-Corbin, Program Management Administrator at FDOT District 5, will present Florida Department of Transportation District Five-Year Work Program for Fiscal Years 2024/2025 through 2028/2029 per request by City Management.		
Recommended Action: FOR PRESENTATION ONLY		

DISTRICT FIVE Work Program Public Hearing

FY 24/25 to FY 28/29

TPO Board Meeting
December 6, 2023



1

FDOT Work Program (FY 2024/25 - FY 2028/29)

Important Dates:

- District 5 Public Comment Deadline: **November 3, 2023**
- Central Office Submits Final Tentative Work Program to Executive Office of the Governor: **December 26, 2023**
- Florida Transportation Commission Public Hearing: **January 8, 2024**
- Florida State Legislation 2024 Session: **January 9 to March 15**
- Adoption: **July 1, 2024**



2

Work Program Key Influence Factors



	2021	2022	2023	
Contract Price Adjustments	n/a	n/a	\$363.16M	
Cost of Materials: New Construction Index	\$5M per Mile	\$6.5M per Mile	\$7.6M per Mile	+ 17%
Cost of Materials: Resurfacing Index	\$751K per Mile	\$869K per Mile	\$1.1M per Mile	+ 26.6%



3

3

Tentative Work Program (FY 2024/25 - FY 2028/29)



Conservative Allocation
and Revenue growth

Resurfacing Program Adjustments



Conservative Contingency Levels



4

4

DEFERRALS

FM# 444879-1 (Volusia County):

- Volusia-Daytona Beach International Airport
- Replace Centrifugal Chillers
- Capital Grant deferred from FY 24/25 to FY 26/27, based on coordination with aviation authority.

FM# 448456-1 (Volusia County):

- LPGA Boulevard, from U.S. 92 to Williamson Boulevard
- Add Lanes and Reconstruct
- Right of Way deferred from FY 25/26-26/27 to FY 26/27-27/28, based on work program balancing.

FM# 446826-1 (Volusia County):

- Interstate-95 at Maytown Road
- New Interchange
- PD&E study deferred from FY 25/26 to FY 28/29, based on coordination with local agency.

DELETIONS

FM# 419772-2 (Volusia County):

- Interstate 95 at U.S. 1 (S.R. 5) interchange
- Interchange – Add Lanes
- Right of Way deleted from FY 26/27 and moved to segment '3' to align with correct transportation system.

5

The Five-Year Outlook

County	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	TOTAL
Volusia	\$123,587,001	\$157,824,077	\$400,523,441	\$106,145,426	\$64,114,069	\$852,194,014
Flagler (within TPO)	\$20,388,463	\$0	\$26,982,151	\$560,000	\$0	\$47,930,614
TOTAL	\$143,975,464	\$157,824,077	\$427,505,592	\$106,705,426	\$64,114,069	\$900,124,628



6

River to Sea TPO Region – Funding Breakdown

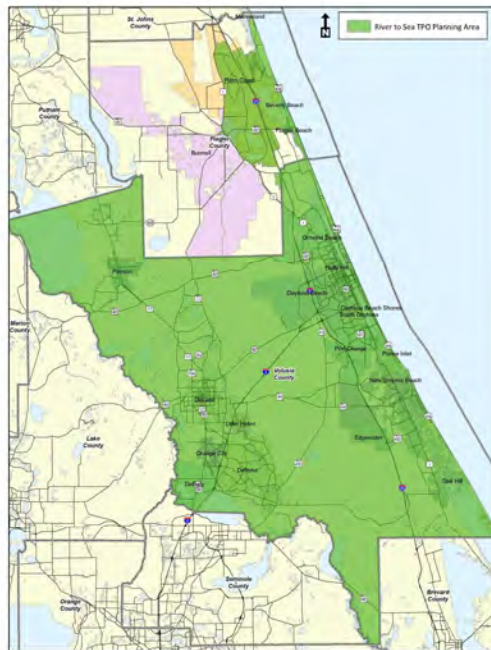
Project Type	Five-Year Estimated (Volusia)	Five-Year Estimated (Flagler – in TPO)	Total
Safety	\$21,498,908	\$0	\$21,498,908
Capacity	\$275,343,134	\$4,920,000	\$280,263,134
Preservation	\$243,692,620	\$37,745,162	\$281,437,782
Multi-modal	\$171,822,318	\$0	\$171,822,318
Operations	\$7,140,158	\$0	\$7,140,158
Bike/Ped	\$42,371,180	\$3,491,759	\$45,862,939
Misc.	\$90,325,696	\$1,773,693	\$92,099,389



7

7

Key Projects

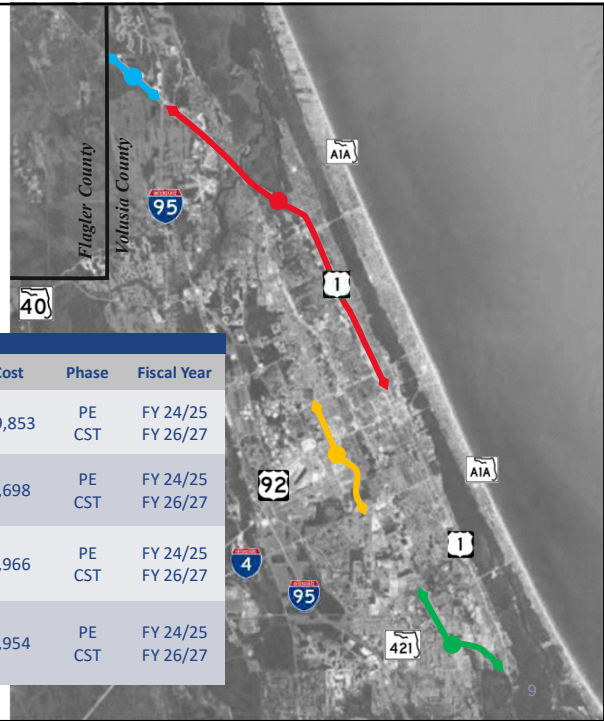


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8

Key Projects - Resurfacing (Volusia County)

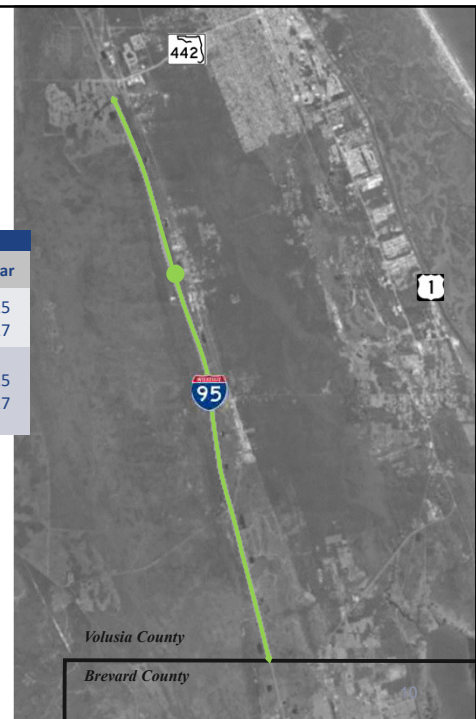
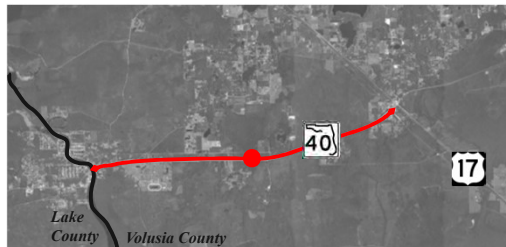
Volusia County					
FPID	Project Description	Total Cost	Phase	Fiscal Year	
452908-1	U.S. 1 (S.R. 5), from Taylor Avenue to Woodland Avenue	\$12,759,853	PE CST	FY 24/25 FY 26/27	
452908-2	U.S. 1 (S.R. 5), from Woodland Avenue to Flagler County Line	\$8,396,698	PE CST	FY 24/25 FY 26/27	
452641-1	S.R. 483 (Clyde Morris Boulevard), from S.R. 400 (Beville Road) to S.R. 430 (Mason Avenue)	\$9,018,966	PE CST	FY 24/25 FY 26/27	
450643-1	S.R. 5A (Nova Road), from U.S. 1 to Herbert Street	\$8,582,954	PE CST	FY 24/25 FY 26/27	



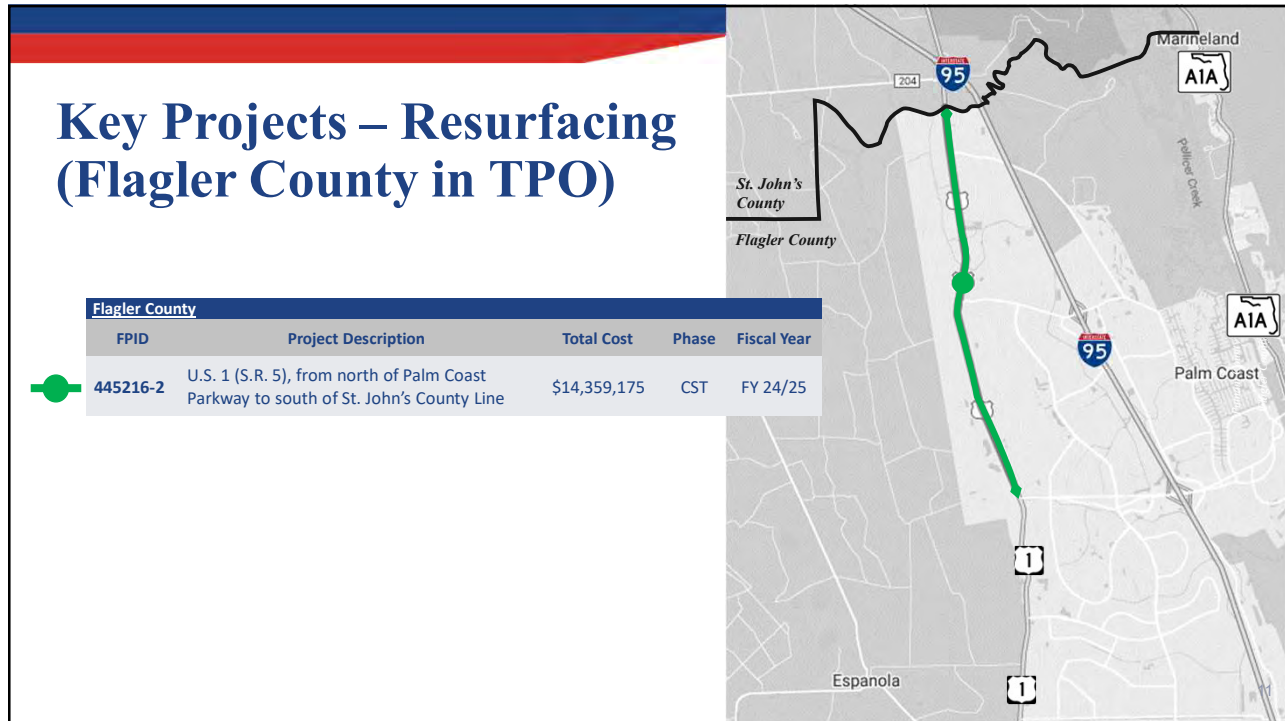
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Key Projects - Resurfacing (Volusia County)

Volusia County					
FPID	Project Description	Total Cost	Phase	Fiscal Year	
452907-1	S.R. 40, from Lake County Line to Railroad Avenue	\$8,906,142	PE CST	FY 24/25 FY 26/27	
453545-1	Interstate 95, from Brevard County Line to south of S.R. 442	\$32,222,608	PE CST	FY 24/25 FY 26/27	



10



11



12

Key Projects – Bike Path/Trail Projects St. John’s River to Sea Loop

Volusia County				
FPID	Project Description	Total Cost	Phase	Fiscal Year
439865-4	from Saul’s Street/McDonald Road to Carmen Drive/Ridge Boulevard	\$9,603,771	CST	FY 28

Legend:
— Existing Trail
— Future Trail

13

Key Projects – Bike Path/Trail Projects

Flagler County				
FPID	Project Description	Total Cost	Phase	Fiscal Year
447101-1	Graham Swamp Trail, from Lehigh Trail to Graham Swamp Conservation Area	\$684,109	PE	FY 24/25

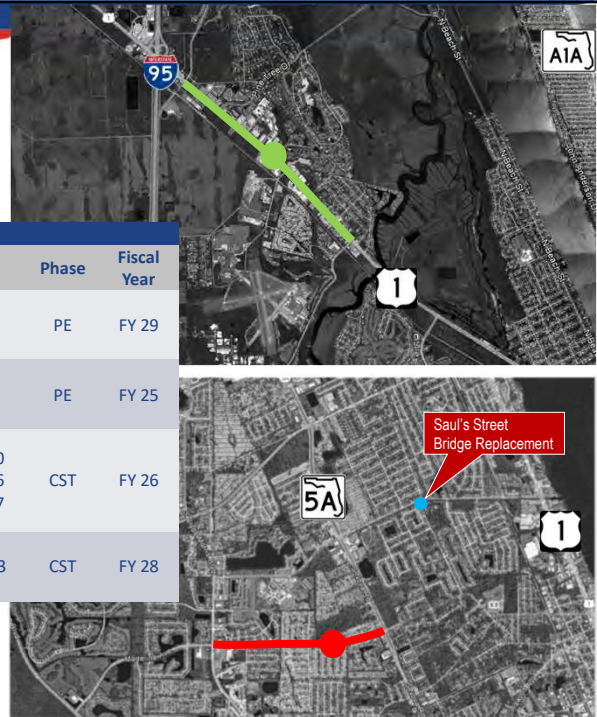
Legend:
— Existing Trail
— Future Trail

14

Key Projects – Bike Path/Trail Projects

Volusia County

FPID	Project Description	Total Cost	Phase	Fiscal Year
453460-1	Madeline Avenue Trail – Phase 1	\$407,680	PE	FY 29
447018-1	Saul's Street Bridge Replacement – from Oak Glen Drive to Reed Canal Road	\$488,316	PE	FY 25
450247-1	Ponce Inlet Mobility – Phases 1, 2, and 3	\$1,783,580	CST	FY 26
450247-2		\$1,855,066		
450247-3		\$2,507,517		
448786-1	U.S. 1, from Airport Boulevard to Broadway Avenue	\$4,516,483	CST	FY 28



15

15

Key Projects – Volusia County

FM# 443991-1:

Beach Street Complete Streets, from Bay Street to Michigan Avenue
Urban Corridor Improvements, Safety

Construction funded in FY 24/25

Funding in Tentative Work Program: \$8,822,918



FM# 448907-1:

Port Orange Sidewalk Bundle #1
Pedestrian Improvements

Design funded in FY 28/29

Funding in Tentative Work Program: \$1,415,882



16

16

Key Projects – Traffic Operations

Volusia County					
FPID	Project Description	Total Cost	Phase	Fiscal Year	
453467-1	Benson Junction Road Reconstruction	\$5,726,582	CST	FY 25	
453472-1	U.S. 1 at Rhode Island Street Emergency Signal	\$568,289	CST	FY 25	
453490-1	South Daytona Traffic Camera Network	\$1,784,458	PE CST	FY 25	FY 27



17

17

Key Projects – Truck Parking (Volusia County)



FM# 446445-2:

- Truck Parking – Central Florida Corridor: Eastbound Volusia County Site
- Parking Facility
- Right of Way funded in FY 26/27 to 27/28 and Construction funded in FY 28/29
- Funding in Tentative Work Program: \$37,699,960

FM# 446445-4:

- Truck Parking – Central Florida Corridor: Westbound Volusia County Site
- Parking Facility
- Right of Way funded in FY 27/28
- Funding in Tentative Work Program: \$15,000,000



18

18


MOVING FLORIDA FORWARD

Volusia County Region

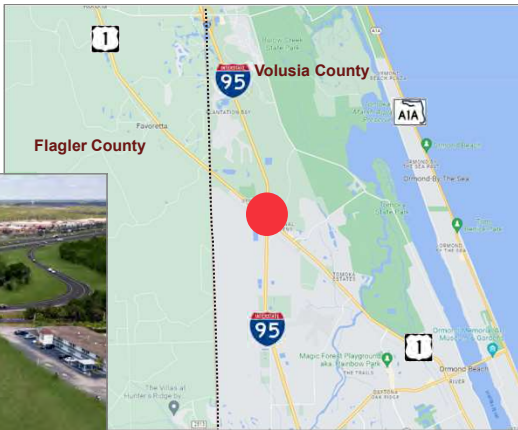
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Interstate 95 at U.S. 1 Interchange



- Construction start Fall 2027




INTERCHANGE IMPROVEMENTS



Volusia County



TPO Summary

25

Priority Projects Funded

\$315,356,513


Other Funding Opportunities

Grants:

- Infrastructure Investment and Jobs Act (IIJA); i.e., PROTECT, MEGA, INFRA, SS4A, etc.
- Federal Transit Administration (FTA) Grants

Previous TPO Awards:

- Safe Streets and Roads for All (SS4A); Planning Grant (*Volusia and Flagler Counties*)
- FDOT Letter of Consistency
- Contact: Alice Guiliani, D5 PLEMO;
Email: Alice.Guiliani@dot.state.fl.us



Thank you!

Katherine Alexander-Corbin
Program Management Administrator

Contact:

Phone: (386) 943-5168

Email: Katherine.Alexander@dot.state.fl.us

Alternate Email: D5-WPPH@dot.state.fl.us

Website: www.fdot.gov/wpph/district5





TENTATIVE WORK PROGRAM PUBLIC HEARING REPORT

FISCAL YEAR 2025 TO FISCAL YEAR 2029



SUMMARY REPORT - FLAGLER COUNTY

AS OF **10/4/2023-5:38 PM** SUBJECT TO CHANGE

FLORIDA DEPARTMENT OF TRANSPORTATION DISTRICT 5
PROJECTS FUNDED JULY 1, 2024 TO JUNE 30, 2029
VISIT US AT WWW.FDOT.GOV/WPPH/DISTRICT5

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Freight Logistics And Passenger Operations Program: Aviation

437025-3 - FLAGLER-FLAGLER CO TERMINAL BUILDING

Type of Work: AVIATION REVENUE/OPERATIONAL

Phase	Funding Source	2025	2026	2027	2028	2029
Capital	Local	\$300,000	\$300,000			
	State	\$1,200,000	\$1,200,000			
Total for Project 437025-3		\$1,500,000	\$1,500,000			

440774-1 - FLAGLER-FLAGLER CO HANGAR

Type of Work: AVIATION PRESERVATION PROJECT

Phase	Funding Source	2025	2026	2027	2028	2029
Capital	Local			\$250,000		
	State			\$1,000,000		
Total for Project 440774-1				\$1,250,000		

444871-1 - FLAGLER-FLAGLER CO PAVEMENT EXTENSION

Type of Work: AVIATION PRESERVATION PROJECT

Phase	Funding Source	2025	2026	2027	2028	2029
Capital	Local				\$250,000	\$250,000
	State				\$1,000,000	\$1,000,000
Total for Project 444871-1					\$1,250,000	\$1,250,000

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Freight Logistics And Passenger Operations Program: Transit

435394-1 - FLAGLER CO PUBLIC TRANSPORTATION FTA SECTION 5311

Type of Work: OPERATING/ADMIN. ASSISTANCE

Phase	Funding Source	2025	2026	2027	2028	2029
Operations	Federal	\$75,688	\$77,958	\$80,307		
	Local	\$75,688	\$77,958	\$80,307		
Total for Project 435394-1		\$151,376	\$155,916	\$160,614		

442452-1 - FLAGLER-BLOCK GRANT OPERATING ASSISTANCE DEMAND RESPONSE SERVICE

Type of Work: OPERATING FOR FIXED ROUTE

Phase	Funding Source	2025	2026	2027	2028	2029
Operations	Local	\$390,271	\$401,979	\$414,038		
	State	\$390,271	\$401,979	\$414,038		
Total for Project 442452-1		\$780,542	\$803,958	\$828,076		

442452-2 - FLAGLER-BLOCK GRANT OPERATING ASSISTANCE DEMAND RESPONSE SERVICE

Type of Work: OPERATING FOR FIXED ROUTE

Phase	Funding Source	2025	2026	2027	2028	2029
Operations	Local				\$426,459	\$439,253
	State				\$426,459	\$439,253
Total for Project 442452-2					\$852,918	\$878,506

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Highways

433614-2 - CR 205 FROM SR 100 TO PRIVATE DIRT ROAD

Type of Work: WIDEN/RESURFACE EXIST LANES

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State	\$1,902,195				
Total for Project 433614-2		\$1,902,195				

435300-2 - CR 304 RESURFACING FROM CR-305 TO SR-11

Type of Work: RESURFACING

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	Local		\$1,429,009			
	State			\$2,833,491		
Total for Project 435300-2			\$4,262,500			

444996-1 - RIMA RIDGE RESURFACING VARIOUS ROADWAYS

Type of Work: WIDEN/RESURFACE EXIST LANES

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	Local			\$136,067		
	State			\$4,783,933		
Total for Project 444996-1				\$4,920,000		

445216-2 - SR 5 FROM NORTH OF PALM COAST PKWY TO SOUTH OF ST JOHNS COUNTY LINE

Type of Work: RESURFACING

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State	\$14,359,175				
Total for Project 445216-2		\$14,359,175				

446930-1 - JUNGLE HUT ROAD FROM N OCEAN SHORE BLVD TO BEACH ACCESS POINT

Type of Work: ROAD RECONSTRUCTION - 2 LANE

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	State	\$120,000				
Total for Project 446930-1		\$120,000				

446931-1 - ARMAND BEACH DRIVE RESURFACING AND OTHER VARIOUS ROADWAYS

Type of Work: ROAD RECONSTRUCTION - 2 LANE

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State				\$560,000	
Total for Project 446931-1					\$560,000	

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Highways

446934-1 - EAST DAYTONA NORTH PAVING - PHASE 1 (VARIOUS LOCATIONS)

Type of Work: FLEXIBLE PAVEMENT RECONSTRUCT.

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State				\$4,162,800	
Total for Project 446934-1					\$4,162,800	

446939-1 - FOREST PARK STREET/CR-35 FROM CR-302 TO SR-100

Type of Work: FLEXIBLE PAVEMENT RECONSTRUCT.

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	State	\$442,750				
Total for Project 446939-1		\$442,750				

447118-1 - SR 5/US 1 OVER PELLICER CREEK BRIDGE REPLACEMENT

Type of Work: BRIDGE REPLACEMENT

Phase	Funding Source	2025	2026	2027	2028	2029
Right of Way	Federal	\$25,000				
Construction	Federal		\$13,412,509			
Total for Project 447118-1		\$25,000	\$13,412,509			

447865-1 - I-95 FLAGLER WEIGH STATION - INSPECTION BARN UPGRADES

Type of Work: MCCO WEIGH STATION STATIC/WIM

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State			\$549,613		
Total for Project 447865-1				\$549,613		

448795-1 - SR A1A RESURFACING FROM S 8TH ST TO N 18TH ST

Type of Work: RESURFACING

Phase	Funding Source	2025	2026	2027	2028	2029
Construction	State	\$3,572,279				
Total for Project 448795-1		\$3,572,279				

450265-1 - SR 5 (US 1) TRAILHEAD FOR LEHIGH RAIL TRAIL

Type of Work: PARKING FACILITY

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	Federal	\$220,000				
Construction	Federal			\$1,004,080		
Total for Project 450265-1		\$220,000		\$1,004,080		

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Highways

452643-1 - SR 100/SR 20 FROM PUTNAM CO LINE TO W OF US 1 / SR 5

Type of Work: RESURFACING

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	Federal	\$1,098,000				
	State	\$54,900				
Construction	Federal			\$17,821,897		
	State			\$158,911		
Total for Project 452643-1		\$1,152,900		\$17,980,808		

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

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Florida Department of Transportation - District Five

FLAGLER COUNTY

Maintenance

244172-1 - CITY OF BUNNELL MOA

Type of Work: ROUTINE MAINTENANCE

Phase	Funding Source	2025	2026	2027	2028	2029
Bridge/Roadway/Contract Maintenance	State		\$256,272			
Total for Project 244172-1			\$256,272			

413615-5 - LIGHTING AGREEMENTS

Type of Work: LIGHTING

Phase	Funding Source	2025	2026	2027	2028	2029
Bridge/Roadway/Contract Maintenance	State	\$86,940	\$89,548	\$97,072		
Total for Project 413615-5		\$86,940	\$89,548	\$97,072		

414979-1 - CITY OF FLAGLER BCH. MEMORANDUM OF AGREEMENT

Type of Work: ROUTINE MAINTENANCE

Phase	Funding Source	2025	2026	2027	2028	2029
Bridge/Roadway/Contract Maintenance	State	\$161,172				
Total for Project 414979-1		\$161,172				

417364-1 - CITY OF PALM COAST MEMORANDUM OF AGREEMENT

Type of Work: ROUTINE MAINTENANCE

Phase	Funding Source	2025	2026	2027	2028	2029
Bridge/Roadway/Contract Maintenance	State		\$427,260			
Total for Project 417364-1			\$427,260			

418105-1 - FLAGLER ROADWAYS PRIMARY IN-HOUSE

Type of Work: ROUTINE MAINTENANCE

Phase	Funding Source	2025	2026	2027	2028	2029
Bridge/Roadway/Contract Maintenance	State	\$168,565	\$168,565	\$168,565	\$168,565	\$168,565
Total for Project 418105-1		\$168,565	\$168,565	\$168,565	\$168,565	\$168,565

Draft Tentative Five-Year Work Program Public Hearing Summary Report - As of October 4, 2023

July 1, 2024 through June 30, 2029

Florida Department of Transportation - District Five

FLAGLER COUNTY

Miscellaneous

413019-2 - FLAGLER TRAFFIC ENGINEERING CONTRACTS

Type of Work: TRAFFIC SIGNALS

Phase	Funding Source	2025	2026	2027	2028	2029
Operations	State	\$95,968				
Total for Project 413019-2		\$95,968				

438636-1 - OLD KINGS ROAD SOUTH MULTI-USE TRAIL FRM FLAGLER/VOL CNT LINE TO SR100

Type of Work: BIKE PATH/TRAIL

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	Federal	\$280,000				
Construction	Federal			\$2,527,650		
Total for Project 438636-1		\$280,000		\$2,527,650		

447101-1 - GRAHAM SWAMP TRAIL FROM LEHIGH TRAIL TO GRAHAM SWAMP CONSERVATION AREA

Type of Work: BIKE PATH/TRAIL

Phase	Funding Source	2025	2026	2027	2028	2029
Preliminary Engineering	Federal	\$615,698				
	Local	\$68,411				
Total for Project 447101-1		\$684,109				

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department PARKS AND RECREATION Division	Amount Account #
Subject: RESOLUTION 2024-XX APPROVING A CONCESSION LEASE AGREEMENT WITH REDEFINED FOOD CO., LLC FOR FOOD AND BEVERAGE CONCESSIONS AT THE SOUTHERN RECREATION CENTER	
Presenter: James Hirst, Director of Parks & Recreation	
Attachments: <ol style="list-style-type: none">1. Presentation2. Resolution3. Application/RFP Response4. Concession Lease Agreement	
Background: Council Priority: Pillar of Priorities – Strong Resilient Economy In October 2023, the City issued RFP-PR-23-48 for a Concession Operation and Management of Food and Beverage Facilities at the Southern Recreation Center. Staff received two proposals considered complete, and a team made up of City staff independently evaluated and scored each proposal on certain criteria. The unanimous choice was Redefined Food Co., LLC. The Redefined Food Co., RFP and the Concession Lease Agreement is attached for City Council review. This Concession Lease Agreement is for five (5) years with one (1) 1-year extension available upon mutual agreement in writing. The rent starts at \$10,048 annually, equivalent to \$9.00 per square foot, and increases 3% annually. Electric, propane, phone, and internet are the sole responsibility of the tenant. Tenant will pay 100% of the water and sewer utilities for the leased premises only.	
Recommended Action: ADOPT RESOLUTION 2024-XX APPROVING A CONCESSION LEASE AGREEMENT WITH REDEFINED FOOD CO., LLC FOR FOOD AND BEVERAGE CONCESSIONS AT THE SOUTHERN RECREATION CENTER	



Southern Recreation Center Concession Lease Agreement



Southern Recreation Center



- Existing 10 clay tennis courts
- 4 additional Clay Courts/1 Stadium Court
- 12 new pickleball courts
- 2 multipurpose rooms
- Viewing balconies
- Kitchen, serving area, and prep room

Project Criteria



- Provide proposed food and drink menu
- Innovative programs to attract attendance to the center
- Experience with similar projects/project team



Request for Proposal Process

- In October 2023, the City issued RFP# PR-23-48
- The RFP contained a draft of the concession lease agreement
- 15 vendors downloaded the RFP documentation
- 2 bids were found responsive and complete
- City Staff independently reviewed and scored bids
- The unanimous selection was Redefined Food Co.





Concession Agreement

- \$9.00 sq ft. – \$10,048 annually
- 3% annual increase
- Tenant responsibility:
 - Electric
 - Water/Sewer
 - Internet
 - Telecom
 - Gas
- 5-year term with an option for one 1-year renewal

**RESOLUTION 2024-__
CONCESSION LEASE AGREEMENT FOR THE
SOUTHERN RECREATION CENTER**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF THE CONCESSION LEASE AGREEMENT WITH REDEFINED FOOD CO., LLC FOR FOOD AND BEVERAGE SERVICES AT THE SOUTHERN RECREATION CENTER; AUTHORIZING THE CITY MANAGER, OR DESIGNEE TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Palm Coast owns the Southern Recreation Center and certain real property located at the Southern Recreation Center; and

WHEREAS, Redefined Food Co., LLC desires to provide food and beverage services for the Southern Recreation Center; and

WHEREAS, the City Council of the City of Palm Coast desires for Redefined Food Co., LLC to provide the above referenced services.

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

SECTION 1. APPROVAL OF CONCESSION LEASE AGREEMENT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the concession lease agreement with Redefined Food Co., LLC for food and beverage services for the Southern Recreation Center, 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 contract attached hereto as Exhibit “A.”

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

determined to be invalid, unlawful, or unconstitutional.

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

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

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

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 16th day of January 2024.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

JENNIFER NIX, CITY ATTORNEY

Attachment: Exhibit A – Concession Lease Agreement with Redefined Food Co., LLC

FORM 1 – CONFLICT OF INTEREST STATEMENT

STATE OF FLORIDA)

) ss

City of Palm Coast)

Jodee Soltz Before me, the undersigned authority, personally appeared, who was duly sworn, deposes, and states:

1. I am the owner, Jodee Soltz of Redefined Food Co LLC (the "entity") with a local office in Palm Coast, FL and principal office in Palm Coast, FL.
2. The above named entity is submitting a Proposal to the City of Palm Coast.
3. The Affiant has made diligent inquiry and provides the information contained in this Affidavit based upon his own knowledge.
4. The Affiant states that only one proposal for the above project is being submitted and that the above named entity has no financial interest in other entities submitting proposals for the same project.
5. Neither the Affiant nor the above named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in connection with the entity's submittal for the above project. This statement restricts the discussion of pricing data until the completion of negotiations and execution of the Contract for this project. This proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, equipment or services, and is in all respects fair and without collusion or fraud.
6. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise ineligible from participating in contract lettings by any local, state, or federal agency.
7. Neither the entity, nor its affiliates, nor anyone associated with them has any potential conflicts of interest due to any other clients, contracts, or property interests.
8. I certify that no member of the entity's ownership, management, or staff has a vested interest in any aspect of or Department of City of Palm Coast.
9. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with City of Palm Coast.
10. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above named entity, will immediately notify City of Palm Coast in writing.

(Continued on Next Page)

PROPOSER

Redeford Food Co LLC
Printed Name of Proposer

Jodee Saltes
Signature

Jodee Saltes
Printed Name

Printed Title

Printed Date

Contact Email

Street Address /Suite #

City, State Zip

Phone

STATE OF Florida)

COUNTY OF Duval)
SS

Sworn to and subscribed before me by means of physical presence or online notarization

This 7th day of November 2023

[Signature]
Signature of Notary

Maria Lavin-Sanhudo
Printed, Typed, or Stamped Name of Notary.

Notary Public, State of Florida

My commission expires 9-14-2025

Personally Known

-OR-

Produced Identification _____

Type: _____



FORM 2 – DEBARMENT CERTIFICATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

[FOR FEDERAL PROJECTS]

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510 Participants responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722 – 4733).

******* BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE *******

1. The Proposer certifies, by submission of this proposal, 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 Proposer is unable to certify to any of the statements in this certification, such Proposer shall attach an explanation to this bid.

<p><u>Redefined Food Co LLC</u> Name of Proposer</p> <p><u>Joelie Solters owner</u> Name and Titles of Authorized Representative(s)</p> <p><u>Joelie Solters</u> Signature(s)</p> <p><u>11/7/23</u> Printed Date</p>
--

FORM 3 – CERTIFICATION OF AUTHORIZED SIGNATORY

Redeformed Food Co LLC
Print/Type Legal Business Name (same as name on W-9 form)

83-1353107
Print/Type FEIN #

Check the legal entity type that is applicable to the above named business:

- Sole Proprietorship – Complete Section A
 - General or Limited Partnership – Complete Section B
 - Corporation (Inc. , LLC) Complete Section C
- *****

Section A: Sole Proprietorship

I HEREBY CERTIFY that I am the sole owner of the business identified above and am authorized to sign legal documents on behalf of said business.

Signature: _____

Print name: _____

Section B: Partnership

I HEREBY CERTIFY that I am a General Partner of the business identified above and am authorized to sign legal documents on behalf of said business.

Signature: _____

Print name: _____

Section C: Corporation

I HEREBY CERTIFY that a meeting of the Board of Directors of Redeformed Food Co LLC
Legal business name

a corporation /LLC under the laws of the State of Florida, was held on 1/28 2022. The following resolution was duly passed and adopted:

“RESOLVED, that Jodee Solts is an officer and director of the corporation (or the managing member of the LLC) and is hereby authorized to execute contracts between the City of Palm Coast, a municipal corporation and this corporation/LLC, and that execution thereof by said officer and director, attested by the Secretary of the corporation/LLC, shall be the official act and deed of this corporation/LLC.”

I FURTHER CERTIFY that said resolution is now in full force and effect.

IN WITNESS THEREOF, I have hereunto set my hand this 7 day of November, 2023

Provide copy of Resolution

Jodee Solts
Corporate Secretary/Managing Member

FORM 4 – COMPLIANCE CERTIFICATION FORM

Please check the appropriate box where indicated and initial where indicated for each of the listed requirements for certification. This Form must also be signed, notarized, and dated by the same signatory.

- 1. Scrutinized Companies** - Section 287.135, Florida Statutes, prohibits companies from bidding, submitting proposals, entering into or renewing contracts with local governments for goods or services of one million dollars (\$1,000,000) or more that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or are engaged in business operations in Cuba or Syria. Both Lists are created pursuant to section 215.473, Florida Statutes. In addition, regardless of contract value, the companies shall not be listed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or be engaged in a boycott of Israel if bidding, submitting proposals, entering into or renewing contracts with a local government for goods and services.

As the person authorized to sign on behalf of Proposer, I hereby certify that Proposer is not listed on the Scrutinized Companies with Activities in Sudan List, is not listed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria. In addition, Proposer is not listed on the Scrutinized Companies that Boycott Israel List, or is engaged in any boycott of Israel. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification, being placed on any of the Lists as indicated herein, conducting business operations with Cuba or Syria, or boycotting Israel may subject the Proposer to civil penalties, attorney's fees, and/or costs. 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, Florida Statutes, 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, Florida Statutes, as amended." Initials JS

- 2. Public Entity Crime** - Any person or affiliate who has been placed on the convicted vendor list following a conviction of a **public entity crime** may not submit a proposal on a contract with a public entity for the construction or repair of a **public building** or public work, may not submit proposals 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 the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified below is qualified to submit a proposal under Fla. Stat. §287.133(2)(a). Initials JS

- 3. Americans with Disabilities Act** - Proposer shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Proposer agrees to comply with the rules, regulations and relevant orders issued pursuant to the Americans with Disabilities Act (ADA), 42 USC s. 12101 et seq. It is understood that in no event shall the City be held liable for the actions or omissions of the Proposer or any other party or parties to the Concession lease Agreement for failure to comply with the ADA. Proposer agrees to hold harmless and indemnify the City, its agents, officers or employees from any and all claims, demands, debts, liabilities or causes of action of every kind or character, whether in law or equity, resulting from the Proposer's acts or omissions in connection with the ADA. Initials JS

- 4. Drug-Free Workplace** - As the person authorized to sign on behalf of Proposer, I hereby certify that the company identified below in the section entitled "Respondent Vendor's Name" is in compliance with Florida Statute 287.087, providing a Drug-Free Workplace. Initials JS

5. **Compliance With Public Records** - Upon award, recommendation, or thirty (30) days after receipt, proposals become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. The submission of a proposal authorizes release of Proposer's credit data to City of Palm Coast. If the Proposer submits information exempt from public disclosure, Proposer must identify with specificity which pages/paragraphs of its proposal are exempt from the Public Records Act, identifying the specific exemption section that applies to each. The protected information must be submitted to the City in a separate electronic file marked accordingly. By submitting a response to this solicitation, Proposer agrees to defend the City in the event City is forced to litigate the public records status of Proposer's documents. Initials JS
6. **Litigation:** Provide a summary of all litigation, claim(s), or contract dispute(s) filed by or against the Proposer in the past five (5) years that are related to the services the Proposer provides in the regular course of business. The summary shall state the nature of the litigation, claim or contract dispute, a brief description of the case, the outcome or projected outcome, and monetary amounts involved.
 Applicable Not Applicable. Initials JS
7. **License Sanctions:** Attach a list of any regulatory or licensing agency sanctions within the past five (5) years. Check appropriate box: Applicable Not Applicable Initials JS
8. **Vendor Registration** - All proposers awarded contracts, purchase orders, or work orders must register as a vendor with the City of Palm Coast. Please indicate if your company has registered as a vendor with the City of Palm Coast. I have already registered as a vendor with the City. I have not registered as a vendor with the City, but plan to do so if awarded a contract, purchase order, or work order through this solicitation. Initials JS
9. **Proposal Submission Acknowledgement** - The Proposer has carefully examined the RFP, including the Instructions, Contract Template, addenda, and any other accompanying documents for this project. The Proposer has completely analyzed the information contained in this RFP as guidance for the preparation its proposal. The Proposer's submittal is sufficiently specific, detailed and complete to clearly and fully demonstrate the Proposer's understanding of the proposed work and/or product requirements. The Proposer agrees and understands that, if awarded, all portions of the proposal shall become an integral part of the agreement and contract with the City of Palm Coast, Florida. Should there be a conflict between the proposal and the RFP, the RFP shall prevail. Initials JS

I certify that all information contained in this proposal is truthful and correct at the time of submission. I further certify that I am duly authorized to submit this proposal on behalf of the Proposer as its act and deed and that the Proposer is ready, willing and able to perform if awarded the contract. I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Palm Coast or of any other interested proposer; and that the undersigned executes this Certification with full knowledge and understanding of the matters herein contained and is duly authorized to do so. The signatory for the Proposer swears that none of the information supplied was for the purpose of defrauding the City.

PROPOSER:

Redefind Food Co LLC
Printed Name of Proposer

STATE OF Florida)

COUNTY OF Flagler) SS

Judee Sotter
Signature

Sworn to and subscribed before me by means of physical presence or online notarization

Judee Sotter
Printed Name

This 7th day of November 2023

Printed Title

[Signature]
Signature of Notary

Printed Date

Contact Email

Maria Lavin-Sanhudo
Printed, Typed, or Stamped Name of Notary

Street Address /Suite #

Notary Public, State of Florida

City, State Zip

My commission expires 9-14-2025

Phone

Personally Known

-OR-

Produced Identification _____

Type: _____



FORM 5- E-VERIFY REGISTRATION AND USE AFFIDAVIT

A. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, all Contractors (as defined by the statute) 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 its employees hired on and after January 1, 2021.

B. Also, pursuant to section 448.095, Florida Statutes, Contractors shall also require all subcontractors performing work under to use the E-Verify system for any employees the subcontractors may hire.

C. Instructions - Provide evidence of compliance with section 448.095, Florida Statutes including an Affidavit 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.

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.

D. The successful proposer awarded the contract hereunder must obtain from all subcontractors providing goods or services under the awarded contract, an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes along with a copy of the subcontractor's proof of registration. The successful bidder must maintain a copy of each subcontractor affidavit and proof of registration during the duration of the contract awarded and provide to City upon request.

E. Failure to comply with this provision is a material breach of the awarded contract, and shall result in the immediate termination without penalty to the City. Proposer shall be liable for all costs incurred by the City to secure a replacement contract, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

<u>Redefined Food Co LLC</u> Name of Proposer
<u>Jodee Soltes - owner</u> Name and Titles of Authorized Representative(s)
<u>Jodee Soltes</u> Signature(s)
<u>11-7-23</u> Printed Date

Redefined Food Co LLC
[Company Letter Head] 160 Cypress Point Pkwy
CONTRACTOR E-VERIFY AFFIDAVIT Unit A106
Palm Coast, FL 32164

I hereby certify that Redefined Food Co LLC [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 Redefined Food Co LLC [insert contractor company name], proof of registration in the E-Verify system is attached to this Affidavit.

x Jodee Saltes
Print Name: Jodee Saltes
Title: owner
Date: 11-7-23

STATE OF FLORIDA

COUNTY OF Duval

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 7th day of November, 2023 by Jodee Saltes [name of officer or agent, title of officer or agent] of [name of contractor company acknowledging], a Florida [state or place of incorporation] corporation, on behalf of the corporation. He/she is personally known to me or has produced Personally Known [type of identification] as identification.

[Signature]

Notary Public

Maria Lavin-Sanhudo

Name typed, printed or stamped

[NOTARY SEAL]



My Commission Expires: 9-14-2025

CONTRACT TEMPLATE

REFERENCES

Proposer shall provide a minimum of three (3) references for which they are currently providing, or have provided, this type of service/commodity.

REFERENCES CANNOT INCLUDE CURRENT CITY EMPLOYEES. FAILURE TO MEET THIS REQUIREMENT MAY RESULT IN DISQUALIFICATION AND YOUR SUBMISSION DEEMED NON-RESPONSIVE.

REFERENCE 1

Belle Terre Elementary School PTO
Company Name
Lauren Ramirez, owner / PTO member
Contact Name and Title
386-222-2819
Phone Number
lauren@sdusmedtraining.com
Email Address
Duration of Contract or Business Relationship:
we catered 1 mother/son Dance with individual
fully cooked meals.

REFERENCE 2

FCAR
Company Name
Denise D'Ambrosio Lorber FCAR Business
Contact Name and Title Partners President
732-832-9940
Phone Number
deniselorber@gmail.com
Email Address
Duration of Contract or Business Relationship:
we catered 1 holiday Taro Bar party

REFERENCE 3

Flagler Oars
Company Name

Pam Birtolo Executive Director
Contact Name and Title

386-569-4310
Phone Number

pambirtolo@me.com
Email Address

Duration of Contract or Business Relationship:
we calved wraps for Flagler Oars and
she comes in a few times a week for
smoothies, wraps etc.



City of PALM COAST

Finance Department
Budget & Procurement Office

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

ADDENDUM NO. 1

Project: Concession Operation and Management of Southern Recreation Center Food & Beverage Facilities

Issue Date: 11/6/2023

Due Date: 11/9/2023

Intent: This addendum is issued in order to incorporate the following clarifications, additions, omissions, deletions, or changes into the Contract Documents prior to the date bids are due. Except as hereinafter specified, the work shall be in accordance with the drawings and specifications.

For your bid to be considered **RESPONSIVE**, A signed and dated copy of the addendum must be included with the bid submittal.

Question, Statement and/or Response

Please note: The pre-proposal meeting held October 30th has been changed to non-mandatory.

1. Q: What is the monthly rent?

A: The monthly rent is \$9/sq ft.; \$837 per month with a 3% increase annually.

2. Q: What are the lease terms?

A: Please see Draft Concession Lease Agreement in the RFP. This will provide details to terms and agreements.

3. Q: Is there flexibility in the manner in which the food is offered to guests/customers? Preference is prepackaged/tamper safe packaging. Bring in commercial grade refrigerated merchandise display unit. Interested in offering a variety of unique and healthy options to include gourmet sandwiches, salads, petite platters, little guest menu and European & American desserts & pastries along with non-alcoholic beverages.

A: Yes, there can be flexibility on food offered.

4. Q: Are there requirements on signage?



A: No requirements on signage just will need to require written approval from the City if looking to add signage.

5. Q: Flexibility in hours of operation?

A: Tenant will be able to choose hours of operations but are required to open a minimum of 4 hours of service per day.

6. Q: How would a pandemic be handled with respect to lease?

A: If the facility closes, rent payment will be frozen till the facility is re-open.

7. Q: Are we obligated to provide alcohol as well?

A: Tenant is not obligated to provide alcohol but it is highly recommended with the demographic of customers expected.

Acknowledgment:

Jodee Salts 11/7/23
Signature and Date

Jodee Salts Owner
Printed Name and Title

Redefined Food Co LLC
Company Name

END OF ADDENDUM NO. 1

ME NU

HAND-HELDS

CLASSIC SMASH BURGER

WAYGU SMASH PATTY/SPECIAL SAUCE/LETTUCE/TOMATO/ONION/HOUSE PICKLE

STREET TACOS

TWO TACOS YOUR CHOICE OF MARINATED CHICKEN OR BRISKET TOPPED WITH PICKLED ONION/CILANTRO/SALSA VERDE

BRISKET SANDWICH

HOUSE SLOW COOKED BRISKET/HOUSE BBQ SAUCE/PICKLED ONION/PICKLED JALAPENO/SIDE OF KALE SLAW

CHICKEN BACON RANCH

SEARED CHICKEN BREAST/AVOCADO/BACON/TOMATO/SPRING MIX

KIMCHI CHICKEN WRAP

SHREDDED CHICKEN/HOUSE KIMCHI/SHREDDED CARROTS/PIQUANTE JAM/SPRING MIX

CHILI CRUNCH CHICPEA WRAP

HOUSE CHILI-CRUNCH/SMASHED GARBANZO BEANS/SPECIAL SAUCE/PICKLED ONION/CUCUMBER/SPRING MIX

CHICKEN "BAHN MI"

SHREDDED CHICKEN/SPECIAL SAUCE/PICKLED ONION/SHREDDED CARROTS/SPRING MIX. SIDE OF KALE SLAW

TURKEY BACON RANCH WRAP

SLOW ROASTED TURKEY/HOUSE RANCH/TOMATOES/BACON BITS/SPRING MIX. SIDE OF KALE SLAW

BREAKFAST

CHIA PUDDING

AVOCADO TOAST

BACON EGG CHEESE(ON SOURDOUGH)

SALADS

POWERBOWL

SPRING MIX/QUINOA/CHILI CRUNCH CHICPEAS/AVOCADO/PICKLED ONION/SHREDDED CARROTS/TOMATO/CUCUMBER/CHILI AOILI

TURKEY COBB

SPRING MIX/SLOW ROASTED TURKEY/TOMATOES/HARDBOILED EGG/AVOCADO/RED ONION/BACON/CHEDDAR CHEESE/HOUSE RANCH

TURKEY COBB

SPRING MIX/SLOW ROASTED TURKEY/TOMATOES/HARDBOILED EGG/AVOCADO/RED ONION/BACON/CHEDDAR CHEESE/HOUSE RANCH

SIDES

SIDEWINDER FRIES

KALE SLAW

SEASONAL PASTA SALAD

DESSERTS

PEANUTBUTTER PIE

SEASONAL CRISP

BASQUE CHEESECAKE

BEVERAGES

COCKTAILS

CLASSIC MIMOSA

BELLINI(PEACH)
POINSETTIA(CRANBERRY)

MARGARITA

SPICY
CLASSIC

BLOODY MARY

CLASSIC BLOODY MARY

PINOT NOIR

HOUSE

PINOT GRIGIO

HOUSE

HIGH NOON

FLAVORS VARIES

BEER

FLAVORS VARIES

SMOOTHIES

GREEN GODDESS

SPINACH/MANGO/PINEAPPLE/OATMILK/
BANANA

ACAI

STRAWBERRY/BLUEBERRY/ACAI/OATMILK/
SIMPLE SYRUP/BANANA

DRAGONFRUIT

STRAWBERRY/DRAGONFRUIT/PINEAPPLE/
OATMILK/BANANA

STRAWNANA

STRAWBERRY/BANANA/OATMILK

DRINKS

SPARKLING WATER

SODA

COFFEE

TEA

CONCESSION LEASE AGREEMENT
SOUTHERN RECREATION CENTER

THIS CONCESSION LEASE AGREEMENT ("Agreement") made and entered into this ___ day of _____, 2024 ("Effective Date") by and between _____, a _____, with offices at _____, and its assigns ("Tenant"), and the **City of Palm Coast**, a Florida municipal corporation, with offices at 160 Lake Avenue, Palm Coast, Florida 32164, herein called ("City").

WITNESSETH:

WHEREAS, City controls, owns, operates, and maintains a recreation center in the City of Palm Coast, Florida known as the Southern Recreation Center ("SRC"), with the power to grant rights and privileges with respect thereto; and

WHEREAS, Tenant is engaged in the business of operating food and beverage facilities; and

WHEREAS, City, on the terms and conditions herein contained, is willing to grant to Tenant the right to operate the food and beverage concession at the SRC and lease a portion of the SRC to Tenant for said operations;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, City and Tenant agree as follows:

1. Leased Premises.

- A.** City hereby provides Tenant with lease space located within the Southern Recreation Center located at 1290 Belle Terre Parkway, Palm Coast, FL 32164 as detailed in "Exhibit A", Description of Leased Premises, attached hereto and incorporated herein by reference ("Leased Premises"). The Leased Premises is provided to Tenant "as is".
- B.** During the term of this Agreement, Tenant shall, at its own cost and expense, and to the satisfaction of the City, provide normal and routine daily maintenance of the Leased Premises, designed to keep both Leased Premises and any equipment or fixtures located thereon clean, in good working order, sanitary and in a safe condition, free from hazardous conditions and deterioration, thus providing for the comfort and safety of visitors and patrons. The standard to be used shall be consistent with both a high-quality public recreation center and a high-quality food and beverage concession operation. For the avoidance of doubt, it is the intention of the parties that Tenant is responsible for the condition of the Leased Premises including any furniture, fixtures, equipment, and other property contained therein. All repairs and all replacements shall be at Tenant's sole cost and expense. Tenant is also solely responsible for any damages to the Leased Premises or SRC structure, including, but not limited to, foundational damages, pipe damages, and electrical wiring damages, but only to the extent such damages are caused by Tenant's negligent and/or reckless acts and/or omissions in the operation of Tenant's business. Any damage to the Lease Premises or SRC caused by Tenant

or Tenant's employees, patrons, guests or invitees shall be immediately reported to the City.

- C.** Tenant acknowledges that from time to time, special events, group outings and City programs ("Events") take place at the SRC that may require catering services on site. Tenant has first right of refusal for special event, rentals, tournaments, and programs catering. This Agreement does not preclude the City or a third party event coordinator utilizing the SRC from hiring and utilizing an outside catering business to cater Events in the event Tenant cannot meet the City's catering needs pursuant to this Agreement.
- D.** Upon written approval of City, which shall not be unreasonably withheld, kiosks, patio-type tables and similar facilities may be located in other areas of the SRC if doing so is warranted for enhanced customer service and does not interfere with other SRC activities. In addition, if available City may provide Tenant with access to additional storage facilities located in other areas of the SRC outside of the Leased Premises.
- E.** Upon written approval by City, which shall not be unreasonably withheld, and after obtaining any required permits, Tenant may put signage on or around the SRC. All signage shall be in accordance with local law.
- F.** In addition to the use of the Leased Premises as described herein, Tenant shall possess a non-exclusive right of ingress and egress to and from the Leased Premises through areas designated by the City, subject to SRC rules and regulations, including security regulations, as may be amended from time to time, provided that Tenant's exercise of such right shall not impede or interfere unduly with the operation of the SRC by City, its patrons and other authorized occupants.
- G.** Tenant shall also have the right to the use of reasonably adequate parking facilities for its employees, which facilities shall be located in an area designated by the City for employee parking. Only Tenant employees working pursuant to this Agreement shall use the employee parking facilities.
- H.** With at least 24 hours' notice to Tenant, except in emergency situations, City shall have the right to enter upon the Leased Premises, for any legitimate safety or business purpose, including without limitation, inspecting the Leased Premises or for making improvements or repairs thereto or thereon. In the event of an emergency, City has the right to enter upon the Leased Premises without notice to address immediate health or safety concerns.
- I.** Tenant shall not place or install any racks, stands or other display of merchandise or trade fixtures in the SRC outside the boundaries of the Leased Premises without the express prior written consent of City.
- J.** Tenant acknowledges and agrees that City shall have the right at all times to change, alter, expand, and contract the SRC. Notwithstanding the foregoing, any changes that will affect the Leased Premises, except changes needed for immediate health or safety reasons, will be made after first providing Tenant with at least sixty days (60) notice and an opportunity to consult and collaborate. Without limiting the generality of the foregoing, Tenant acknowledges and agrees

that the SRC (i) may from time to time hereafter undergo renovation, construction, and other modifications; and (ii) the City may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Any shutdown of the SRC or the Leased Premises for a period of more than seven (7) consecutive days shall result in a similar reduction in the Rent.

- K.** City will maintain the SRC, establish and enforce rules and regulations, and City may, in its discretion, temporarily close portions of the SRC for maintenance purposes, and make changes to the SRC including changes in the location of driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic.
- L.** Notwithstanding Section 1.J above, Tenant hereby waives all claims against City and releases City from all losses that Tenant may suffer or incur arising out of or in connection with any changes to the SRC or any portion of the SRC, and Tenant further agrees that Tenant will not be entitled to any rent abatement or any other rent relief in connection with said changes to the SRC other than what is provided for in Section 1(J).
- M.** Tenant shall not make any alterations, additions, or other improvements to the Leased Premises or any part thereof, without first obtaining the written consent of City, which shall not be unreasonably withheld. Authorized alterations, or additions, and/or other improvements, including replacements of equipment, shall be made at Tenant's sole cost and expense. Alterations, additions, and other improvements which are part of the structure or a fixture to the structure shall become the property of City at the expiration or termination of this Agreement. Tenant is responsible for ensuring that all required permits are issued prior to any such alterations, additions or other improvements. Any permits required for such alterations, additions and/or improvements shall be at Tenant's sole cost and expense. Tenant shall not have the right to create or permit the creation of any lien attaching to interest in the Leased Premises as a result of any construction, alterations or additions. Nothing in this Agreement shall be interpreted as granting City approval or consent for any permits, development orders, licenses or other certifications that may be required by law.
- N.** Upon sixty (60) days advance written notice by Tenant to City, and written approval by City, which approval shall not be unreasonably withheld, Tenant may use available green space within the SRC for events. Such use must not negatively impact recreational operations.
- O.** Upon request by City, but no more often than once every twelve (12) months, Tenant will provide access to City to review the Tenant's most recent annual financial report including a statement of revenues and expenses, a balance sheet and a statement of cash flows, all certified as true and correct by the preparer, within 30 days of City's request.
- P.** Tenant must provide employees to accept all deliveries for Tenant's operation. City staff is not authorized to accept deliveries on behalf of Tenant.

2. Concession Rights Granted

- A. For and in consideration of the prompt payment of the compensation to City as hereinafter provided, City hereby grants to Tenant, subject to all of the terms and conditions herein, the exclusive right and obligation to operate and maintain the food and beverage services operation as set forth herein.
- B. Tenant shall not use nor permit the Leased Premises to be used for any purpose other than as set forth herein except with the prior written consent of City, nor for any use in violation of any applicable law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.

3. Tenant Responsibilities and Standards of Conduct

- A. Tenant shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by the Tenant under this Agreement as well as the conduct of its staff, personnel, employees, and agents.
- B. Tenant shall maintain standard business practices as outlined in the Tenant's business plan, attached hereto, and incorporated herein as Exhibit "C".
- C. Tenant shall always have a manager or an employee with management authority on the Leased Premises Tenant is open for business.
- D. During the term of this Agreement, Tenant must maintain its own liquor license.
- E. If the City determines that any employee or representative of Tenant is demonstrating improper conduct inconsistent with the requirements of this Agreement, has engaged in criminal activity on the Leased Premises or the SRC, , or is otherwise interfering with recreational operations, the City shall so notify the Tenant in writing. Tenant shall immediately remove such employee or representative of the Tenant from the Leased Premises.
- F. Tenant agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services and rights granted hereunder. All equipment, devices, and material, utilized by Tenant, shall be installed, and used in accordance with the listed limitations and the manufacturers' instructions.
- G. Tenant shall ensure that all services hereunder are provided after the Tenant has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents from all applicable federal, state and local agencies.
- H. Tenant shall be open for service to the public seven days a week for a minimum of 4 hours a day. Tenant may choose to operate for longer than 4 hours per day, however, cannot operate while the SRC is closed unless written approval by the City is obtained prior to operating outside of the SRC established hours. The SRC and Leased Premises will be closed for Thanksgiving and December 24 and December 25. Such closures shall be noticed to the public no less than one week in advance. Tenant shall coordinate with the City for a minimum of one period of

reduced operations annually that is not less than five calendar days for performance of scheduled maintenance required by City and Tenant.

- I. Tenant will pay 100% of the water and sewer utility costs for the Leased Premises only. City will bill Tenant the cost for water and sewer utilities on a monthly basis and Tenant shall pay the cost to the City within 30 days. Electric consumption for the Leased Premises will be separately metered and billed to Tenant. Tenant is responsible for all other utilities including, but not limited to, natural gas, telecom, internet and any facility/food and beverage reservation system for the Leased Premises.
- J. Tenant is responsible for required inspections of any fire suppression equipment and range hood inspections within the Leased Premises. Tenant is responsible permitting and installing any additional equipment to be used by the Tenant.
- K. Tenant will maintain the under-sink grease interceptor. All grease interceptor cleanings, pick up and maintenance, including the under-sink grease interceptor, are the responsibility of Tenant.
- L. City will provide solid waste removal for the Leased Premises. Tenant is responsible for transferring its refuse from the storage area to the dumpster located in front of the SRC at the close of business each day. Tenant shall ensure that there is no refuse in the storage area adjacent to the SRC remaining overnight. Tenant is responsible for its method of transferring the refuse.
- M.

Tenant may hold special events or programs on the Leased Premises during normal operating hours of the SRC. As provided above, Tenant may request written approval from City to allow for Tenant to operate outside of the SRC's normal operating hours. Music or other noise from Tenant special events or programs may not exceed a volume considered disruptive, as determined by City, to SRC operations and neighboring residential uses. This subsection does not exempt Tenant from having to obtain a Special Event Permit from the City if required by the City's Code of Ordinances.

- N. Tenant and City agree to meet on a quarterly basis, or as otherwise warranted, to discuss and coordinate services and upcoming events.

- 4. **Rent.** Tenant shall compensate the City on a monthly basis for the Leased Premises beginning on _____, or the date of issuance of the Certificate of Occupancy for the Leased Premises, whichever occurs last, at a rate of **\$9.00** per square foot equaling **\$10,048.20** for the first year, **\$837.33** per month for the first year. Rent shall be due on the first day of each month. Each year thereafter on March 1st the annual rental rate shall be increased by 3.0%.

5. Term and Termination.

- A. Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall continue in effect for five (5) years ("Term") commencing on _____, with one Tenant option to renew for an additional one year period, upon mutual agreement in writing of Tenant and City, which will not be

unreasonably withheld Tenant's request for renewal must be in writing and received by the City no less than 12 months prior to the termination of the Term.

- B.** If Tenant, without request or objection by City, shall continue to occupy the Leased Premises beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only upon all terms and conditions of this Agreement. No such holdover shall be deemed to operate as renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' written notice of said termination to the other party at any time.
- C.** City shall have the right to terminate this Agreement for material breach by way of a written notice, in the event Tenant defaults on any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of default. Notwithstanding the foregoing, City shall have the right to immediately terminate without the thirty (30) day cure period, should Tenant be shut down by the State health department, or other authorized health and safety authority, except if the shutdown is due to structural reasons or other reasons not the fault of Tenant. Material breaches of this Agreement include but are not limited to, (i) failure to pay rent and applicable taxes within thirty (30) days of the due date, (ii) insolvency, abandonment/vacancy of the Leased Premises for a period of thirty (30) consecutive days, (iii) conviction of any principal, manager, officer or director of Tenant of a felony, (iv) failure to maintain the required insurance coverage as per Section 7 of this Agreement (v) subletting the Leased Premises (vi) appointment of a receiver over the Tenant's assets and (vii) failure to follow Tenant's business plan.
- D.** Upon receipt of a notice for any termination herein, the parties shall cooperate with each other and use all commercially reasonable efforts to affect a smooth transition process. Tenant shall return and make available to City all supplies, equipment, materials, inventory, fixtures and other property provided by City to Tenant and vacate the Leased Premises before the date indicated in the notice of termination. Tenant may take any equipment that it purchased for use at the Leased Premises. However, if Tenant determines to sell the equipment, it shall give City first right of refusal to purchase any or all such equipment at the then current market value.

6. Indemnification

- A.** Tenant shall indemnify, hold harmless, and defend the City, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision for services 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 Tenant, its agents, servants, officers, officials, employees, or subcontractors. This obligation shall survive the termination or expiration of this Agreement.
- B.** Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.

C. In claims against any person or entity indemnified under this Section by an employee of Tenant 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 Tenant or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

7. Bonds and Insurance

A. Tenant, at its sole cost and expense, shall, at all times, maintain insurance and bonds as set forth in Exhibit B Insurance Requirements.

B. If Tenant fails to maintain the required bonds and insurance coverage and City does not elect to obtain the necessary coverage on Tenant's account, the City may deny Tenant entry to the Leased Premises until such time as Tenant obtains the necessary coverage. In the event that the required bonds and insurance coverage lapses for a period of more than 15 days, the City shall have the right to immediately terminate this Agreement and remove the Tenant from the Leased Premises.

8. **Notice** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

To Tenant at the following address:

To City at the following address:

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

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

9. E-Verify Registration and Use

A. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Tenant 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 Tenant employees hired on and after January 1, 2021. Tenant must provide

evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Tenant 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. Failure to comply with this provision will be a material breach of this Agreement and shall result in the immediate termination of this Agreement without penalty to the City. Tenant shall be liable for all costs incurred by the City securing a replacement contract, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable. Should the Agreement be terminated pursuant to this subsection, Tenant will not be eligible to be awarded a public contract with City for one (1) full calendar year after the date on which the Agreement was terminated.

B. If the Tenant utilizes subcontractors, the following shall apply:

- i. Contractor shall also require all subcontractors performing work under the Agreement to use the E-Verify system for any employees they may hire during the term of the Agreement.
- ii. Contractor 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. Contractor shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement.

C. Tenant agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the City consistent with the terms of the Tenant's enrollment in the program. This includes maintaining a copy of proof of Tenant's and subcontractors' enrollment in the E-Verify program.

D. Nothing in this section may be construed to allow intentional discrimination of any class of persons protected by law.

10. 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 Tenant 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, Tenant 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 Tenant 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 Tenant or keep and maintain public records required by City to perform the Services herein. If Tenant transfers all public records to City upon completion of the Agreement, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of the Agreement, Tenant 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, Tenant 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 Tenant's failure to comply with these requirements.

C. IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, ATTN: KALEY COOK, CITY CLERK, AT 386-986-3713, kcook@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.

11. Miscellaneous

- A. Assignment or Subletting.** Tenant shall not assign this Agreement, any rights under this Agreement or any monies due or to become due hereunder nor delegate or subcontract any obligations or work hereunder without the prior written consent of the City, which shall not be unreasonably withheld. Tenant is expressly prohibited from subletting the Leased Premises.
- B. Choice of Law, Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida. City and Tenant, in the event of litigation under this Agreement, hereby waive, to the fullest extent permitted by law, any right to a trial by jury.
- C. Entire Agreement.** As of the Effective Date above, this Agreement constitutes the entire understanding between City and Tenant. Neither this Agreement nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of any such change, modification, or amendment is sought.

- D. Force Majeure.** Neither party shall be considered in default of performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by the following force majeure events ("Force Majeure Events: (a) acts of God; (b) flood, fire, hurricanes, or forced closure due to a pandemic; (c) war, invasion, terrorist attacks or riots (d) government order or law; (e) national or regional emergency; and (g) other events beyond the reasonable control of the impacted party. If the Leased Premises are not usable as a result of a Force Majeure Event, the Lease Fee shall be abated until the Leased Premises is capable to return to use.
- E. Legal Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising here from, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney fees (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal. This provision shall survive the termination or expiration of this Agreement.
- F. No Joint Venture or Partnership.** Nothing contained in this Agreement shall create or be deemed to create any partnership or joint venture relationship between City and Tenant, nor be construed to give City any interest in the business of Tenant, and Tenant shall have no power or right to obligate or bind City in any manner whatsoever.
- G. No Waiver.** In the event Tenant shall fail to perform any of the terms or conditions of this Agreement, City shall have all equitable and legal rights and remedies permitted by law, including, without limitation, the right to terminate this Agreement effective immediately. No waiver by City of any default or breach of this Agreement shall be considered a waiver of any other or subsequent default or breach.
- H. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement.

TENANT

CITY

CITY OF PALM COAST

By: _____

By: _____

Name: _____

Name: Denise Bevan

Title: _____

Title: City Manager

Date: _____

Date: _____

Exhibit A
Description of Leased Premises

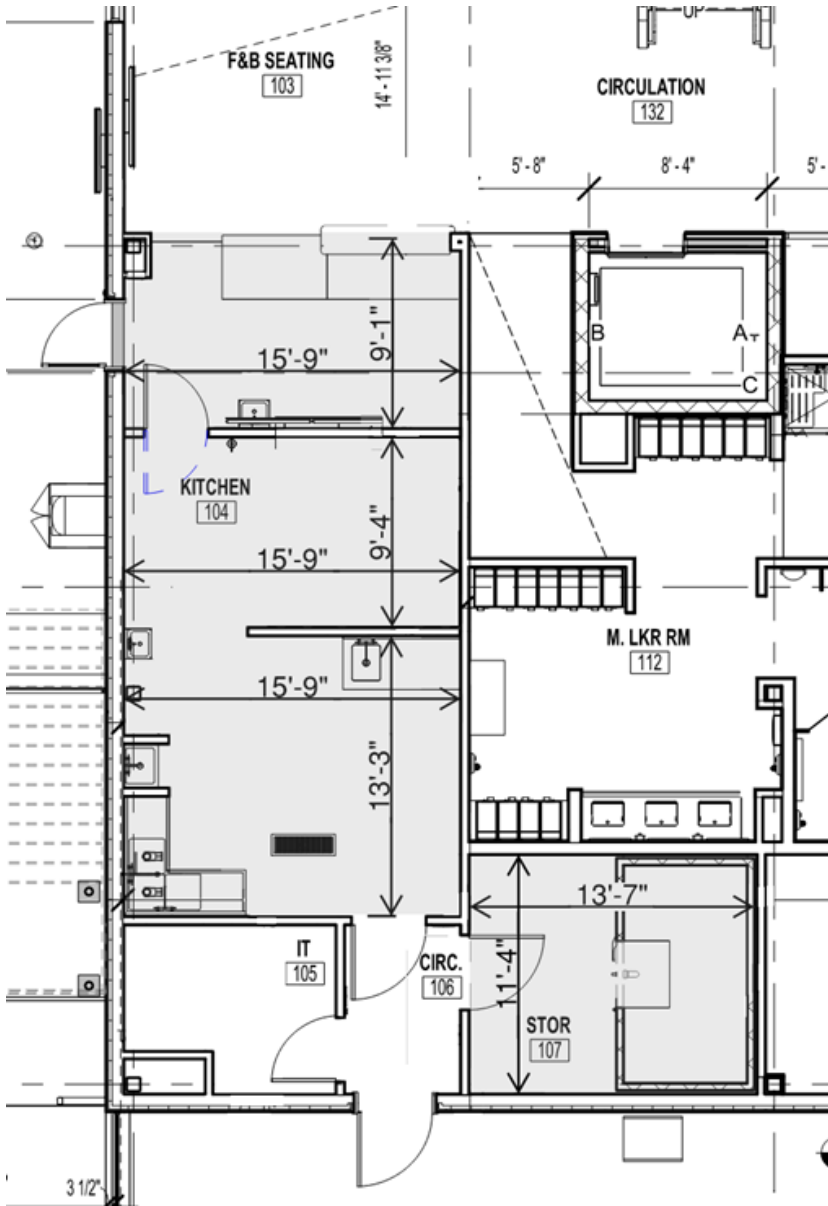
Leased Premises:

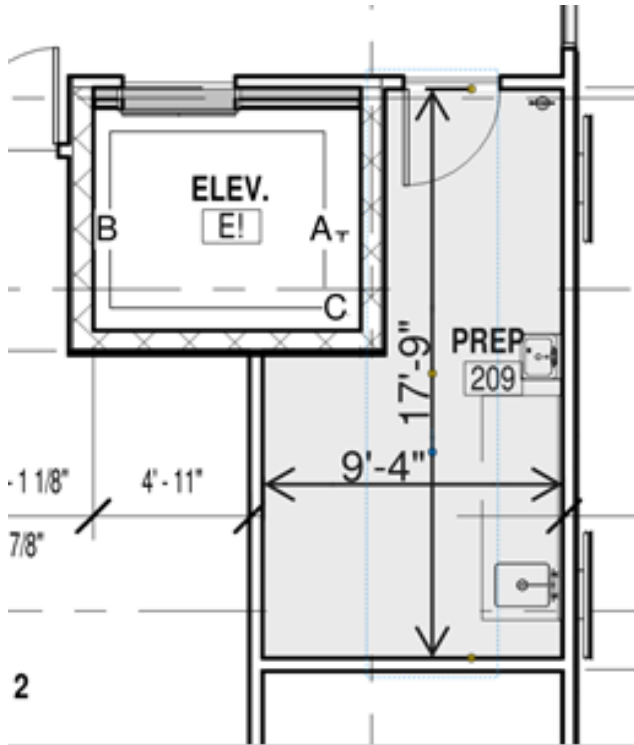
The Leased Premises located at the Southern Recreation Center, 1290 Belle Terre Parkway, Palm Coast, Florida 32164 and includes the kitchen, kitchen serving area, kitchen storage, 2nd Floor Prep area, and front seating area. The legal capacity for the indoor dining room is pursuant to the Fire Marshall's Capacity Rating.

Square Footage

For pricing purposes, the square footage of the Leased Premises is 1116.47square foot as follows:

Area	Gross SQ. FT.	% DISC	ADJ SQ. FT.
Kitchen (back area)- 15.9' x 13.3'	211.47	0%	211.47
Kitchen (front area) - 15.9' x 9.4'	149	0%	149
Kitchen Storage 13.7" x 11.4'	156	0%	156
Serving area 15.9' x 9.1'	144	0%	144
Front Seating Area	288	0%	288
2nd Floor Prep Area - 17.9 x 9.4	168	0%	168
		TOTAL	1116.47





**EXHIBIT B
INSURANCE AND BOND
REQUIREMENTS**

1. GENERAL REQUIREMENTS.

- 1.1. Prior to performance under this Agreement, Tenant shall furnish City with a Certificate of Insurance evidencing the Property and Casualty (an all-risk policy for full replacement value of all Leased Preises improvements, structures, equipment and personal property, Liquor Liability Insurance, Pollution Liability Insurance, Workers' Compensation/Employer's Liability, Commercial General Liability, and Automobile Liability Insurance. The City, its officials, officers, and employees shall be named Loss Payee under the Property and Casualty Insurance and Additional Insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. The Certificate of Insurance shall provide that the City shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. The insurance provided by Tenant shall apply on a primary basis and any other insurance or self-insurance maintained by the City or the City's officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of the Tenant. 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.
- 1.2. Tenant 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.
- 1.3. Compliance with the insurance requirements set forth herein shall not relieve Tenant, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.4. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida. In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

2. COVERAGE AMOUNTS.

2.1. Workers' Compensation/Employer's Liability.

A. Workers Compensation Coverage SUPPLIER'S insurance shall cover Tenant 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.

B. Employers Liability Coverage

\$500,000.00	(Each Accident)
\$500,000.00	(Disease-Each Employee)

\$500,000.00 (Disease-Policy Limit)

2.2. Commercial General Liability.

LIMITS

General Aggregate (per project)	\$2,000,000.00
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.

2.3. Automobile Liability Insurance.

LIMITS

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00
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2.4. Liquor Liability Insurance

LIMITS

\$1,000,000.00

2.5. Pollution Liability Insurance

LIMITS

\$1,000,000.00

2.6. Property and Casualty (an all-risk policy for full replacement value of all Leased Premises improvements, structures, equipment and personal property)

3. Bonds

Comprehensive Dishonesty, Destruction and Disappearance (3-D Bond): Tenant shall obtain and maintain throughout the term of this Agreement (including any renewal period) a 3-D Bond, or equivalent, in an amount not less than Two Hundred Thousand Dollars (\$200,000.00), or limit carried, whichever is greater, from a surety or insurance company authorized to conduct business in the City acceptable to the City covering as a minimum Depositor's Forgery and all employees who may handle funds or property in connection with the Golf Course.

**EXHIBIT C
BUSINESS PLAN**

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department CITY ADMINISTRATION Division	Amount Account #
Subject: PRESENTATION - STRATEGIC ACTION PLAN EVALUATION UPDATE	
Presenter: Lauren Johnston, Assistant City Manager	
Attachments: 1. Presentation	
Background: On an annual basis, staff coordinates an evaluation of the Strategic Action Plan to ensure that the fiscal year adopted Priorities continue to align with City Council's vision. As part of this process, staff conducts a one-on-one interview session with each Council Member to discuss the following key areas: <ul style="list-style-type: none">- Discuss existing Priorities, and direction moving forward- Discuss the Strategic Action Plan process and the next steps- Discuss the City's Long-Term Vision, Mission, and Values After the interview, the staff consolidates feedback and evaluates consistency with the Strategic Action Plan and provides a deliverable that compares feedback to adopted Priorities. The referenced deliverable is provided as part of this agenda item. Staff requests that City Council review the feedback received during the interview sessions and come prepared to discuss amending based on the collective direction. The noted action to consider is as follows: <ul style="list-style-type: none">- Reaffirm the City's Long-Term Vision, Mission, and Values- Reaffirm City Council Priorities	
Recommended Action: FOR PRESENTATION ONLY	

- State of the City
- Arbor Day
- Eggstravaganza
- Food Truck Tuesday
- Memorial Day Celebration
- 4th of July Celebration
- NCAA Youth Sports Clinic
- Starlight Parade
- City of Palm Coast 25th Anniversary Celebration



BUDGET HIGHLIGHTS STRATEGIC ACTION PLAN UPDATE FY23-24

ECONOMIC DEVELOPMENT

- AdventHealth**: In 2023, we celebrated the grand opening of Advent Health on Palm Coast Parkway creating over 400 jobs right here in Palm Coast and addressing the health-care needs of our growing and aging community.
- BJ's**: BJ's Wholesale construction is a lively undertaking with a planned opening for 2024. Other shops at the center include a Long Horn Steak House, Wilson's Ale House, and more!
- AMERICA'S SBDC**: Palm Coast is pleased to have renewed its agreement to offer a wide array of assistance to local businesses through the Florida Small Business Development Center (FSBDC).
- BE BUY LOCAL**: Shopping locally in Palm Coast creates jobs, funds community projects, and supports property taxes for returning a portion of sales tax to purchase within city limits.

PUBLIC SAFETY

PALM COAST FIRE DEPARTMENT

- Celebrated 50 years of service
- New fire station to serve residents in Seminole Woods
- Over 23,000 kids visited during Fire Safety Month
- Responded to disaster declarations during hurricanes Ian and Nicole
- Provided fire protection during the recovery of Fort Myers Beach area

TOTAL CALLS FOR SERVICE	14,310
TOTAL HOURS TRAINING	

FLAGLER COUNTY SHERIFFS OFFICE

- 4-Diamond Accredited Agency
- Crime is down 84% a historical 25-year low for Palm Coast
- Lighthouse Comm named Palm Coast the 2nd safest city in Florida
- 99.7% of 311 calls answered within 30 seconds or less
- 2023 American Jail Association's Innovation Award

TOTAL CALLS FOR SERVICE	117,931
TOTAL CRASHES	3,152

PUBLIC WORKS

- In-house road/facility maintenance projects saved \$48,000 in 2023
- Asset management for fleet vehicles resulted in recouping over \$86,000 in 2023

TRAFFIC SIGNS WORK ORDERS	95
ROAD SIGN WORK ORDERS	122
POTHOLES REMOVED	264
HAZARDOUS TREES REMOVED	286



RECREATION

- 0
- 53,693
- 13
- 130+
- 16
- 75,848
- 329
- 1
- 4
- 26
- 1



ANNUAL BUDGET REPORT



REFLECTING ON 2023 TRIUMPHS AND PROPELLING FORWARD INTO THE NEW BUDGET SESSION

- Transparency
- Trust
- Accountability
- Education
- Civic Engagement
- Public Access
- Inclusivity

23-24 BUDGET BOOK SNAP SHOT



VIEW THE ENTIRE BUDGET BOOK ONLINE BY VISITING WWW.PALMCOAST.GOV TODAY!

HOW PROPERTY TAXES ARE CALCULATED BASED ON MILLAGE RATE



Flagler Board ¢.45

School Board ¢.29

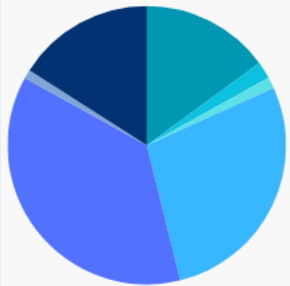
Palm Coast ¢.23

Other ¢.29

MONTHLY RESIDENTIAL FEES

	Fiscal Year 22/23	Fiscal Year 23/24	Difference
Garbage/ Recycling	\$ 29.97/mo	\$ 32.32/mo	\$ 2.35/mo
Stormwater	\$ 22.27/mo	\$ 28.34/mo	\$ 6.07/mo
Monthly Total	\$ 52.24/mo	\$ 60.66/mo	\$ 8.42/mo
Daily Total	\$ 1.74	\$ 2.02	\$.28

EXPENDITURES BY FUNCTION



- CULTURE/RECREATION 14.9%
- PUBLIC SAFETY 36.9%
- TRANSFERS TO OTHER FUNDS 2%
- ECONOMIC ENVIRONMENT 1%
- CONTINGENCY 1.3%
- TRANSPORTATION 15.9%
- GENERAL GOVERNMENT 27.9%

INVESTING IN OUR FUTURE



Strong Resilient Economy



Safe & Reliable Services



Civic Engagement



Sustainable Environment & Infrastructure

CITY CULTURE

FINANCE

The finance department of a city is committed to fiscal responsibility, transparency, and cost savings. They conduct regular audits to ensure efficient use of funds and work with other departments to identify areas for savings. They also explore new technologies and strategies for financial management, such as online payment systems and digital record-keeping. Their efforts aim to ensure that the city's resources are used effectively and responsibly, benefitting all residents.

AWARD WINNING

- Excellence in Public Procurement Award
- Distinguished Budget Presentation Award
- Popular Annual Financial Report



HUMAN RESOURCES

The Human Resource mission is “delivering exceptional service by making our employees our priority” and to consistently improve the city culture by enhancing employee experience.

Emergency Management Food Plan

The team utilized MUNIS software to establish a staffing plan and duties for a local emergency food unit, creating standard procedures, sign-in sheets, and meal plans.

Random Drug/ Alcohol Screenings

In FY 2023, we did a total of 143 random tests with 43 of those being in-house non-CDL. By conducting the screenings in-house, we save \$50.00 per test.

City-Wide Training Opportunities

- Ethics Training
- Life Scan
- Voya Transition Meetings
- Counterfeit Currency Training
- Public Records Training
- Understanding Your Credit
- New Supervisor Training
- Biometric Screenings
- Employee Appreciation Breakfast
- Blood Pressure Lunch & Learn
- Defensive Driving Class
- Diversity and Inclusion Training
- Benefits & Wellness Fair
- FEMA Training
- Active Assailant Training
- New Evaluation Process Training



EMPLOYEE RECOGNITION PROGRAM

The City of Palm Coast's incredible staff show up daily to meet any challenges, determined to 'make somebody's day.'

The Day Maker program allows employees to nominate a coworker for the Day Maker of the Month Award or the Day Maker Shout Out Award.

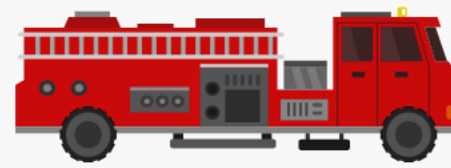
At the end of the year, one Day Maker of the Month will be awarded Employee of the Year at the State of the City.

ROADMAPS

Career roadmaps are now in place for each department. This outlines certifications, training, education, and experience needed to advance in each department through an auto-promote process.

FY 23: 60 AUTO-PROMOTES

PUBLIC SAFETY



PALM COAST FIRE DEPARTMENT

- Celebrated 50 years of service
- Received State Appropriations for new fire station to serve residents in Seminole Woods
- Over 10,000 kids visited during Fire Safety Month
- Responded to disaster declarations during hurricanes Ian and Nicole
- Provided fire protection during the recovery of Fort Myers Beach area

TOTAL CALLS FOR SERVICE	14,310
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FLAGLER COUNTY SHERIFFS OFFICE

- 4 Diamond Accredited Agency
- Crime is down 54%, a historical 25-year low for Palm Coast
- UpHomes.Com ranked Palm Coast the 2nd safest city in Florida
- 99.7% of 911 calls answered within 15 seconds or less
- 2023 American Jail Association's Innovation Award

TOTAL CALLS FOR SERVICE	117,931
TOTAL CRASHES	3,152

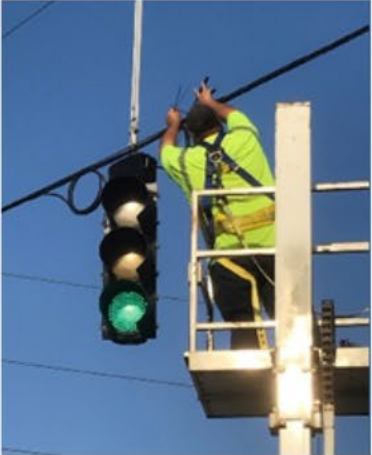


PUBLIC WORKS

- In-house road/facility maintenance projects saved \$61,000 in 2023
- Asset management for fleet vehicles resulted in recouping over \$894,000 in 2023

TRAFFIC SIGNAL WORK ORDERS	95
ROAD SIGN WORK ORDERS	122
POTHoles REMOVED	264
HAZARDOUS TREES REMOVED	286

SECURED FUNDING



In 2023, we received \$18.3 million to advance Phase II of the Old Kings Road North Widening Project. An additional \$4.5 million is allocated for traffic and safety improvements along Belle Terre Parkway, from Royal Palms Parkway to Whiteview Parkway.



Enhancements to Waterfront Park were made possible through a multi-year grant from F.I.N.D. A new floating dock, concrete pad, non-motorized water access point, and new landscaping was completed in FY23. A F.I.N.D. grant also made the 15th annual Waterway Cleanup possible.

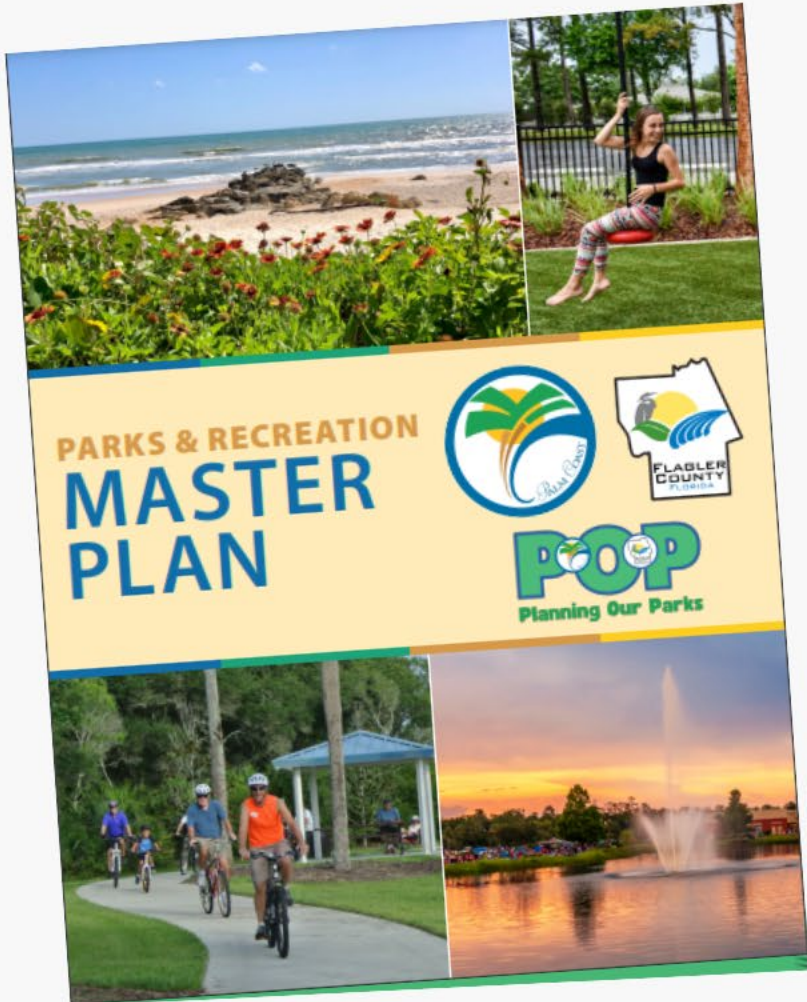
STATE APPROPRIATIONS

Palm Coast received an unprecedented \$54.55 million in state appropriations to advance specific crucial projects that will address economic expansion, transportation improvements, public safety initiatives, and flood protection upgrades.

OTHER GRANTS

The City of Palm Coast has spearheaded several grant proposals in order to fund important initiatives. Two examples include: The TDC grant for the Southern Recreation Facility and the SJRWMD grant for the London Waterway Expansion project.

COUNTYWIDE COLLABORATION



COLLABORATIVE EFFORTS

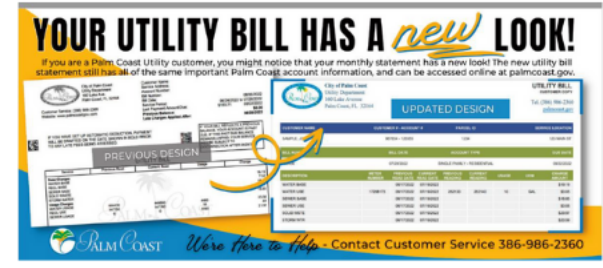
- Parks & Recreation Master Plan
- Countywide Capital Improvement Projects Summit
- Critical roadway safety improvements
- Healthcare Roundtable
- National Citizen Survey
- Routine City Managers & County Administrator meetings
- Emergency Management Planning & Briefings
- Public Safety Trainings
- Community Celebrations such as United Flagler 4th, Veterans Day, and more!

COMMUNITY INFRASTRUCTURE

CUSTOMER SERVICE

Palm Coast City's Customer Service Division is a dedicated team of professionals committed to providing exceptional service to the community. Their goal is to exceed customer expectations by delivering prompt, courteous, and accurate information to every person who contacts them.

Calls Recieved	123,425
Increase in PCC Cases	62%



UTILITY

PEP Team

- Piloting a direct wired system for Pretreatment Effluent Pumping (PEP) tanks, aiming to reduce failures and enhance safety.

Water Conservation

- Actively promoted water conservation through various channels, including public outreach events, social media, and council business meetings where we showcased water conservation information and distributed general environmental awareness materials

Customer Service Division

- Staff set up the process to alert residents through text messages about their bill being due or were scheduled for non-payment disconnection.
- Participated in the redesign of the Utility bill.
- New Call in options added to assist residents when calling for information on recycling bins, new services, and emergency service information.

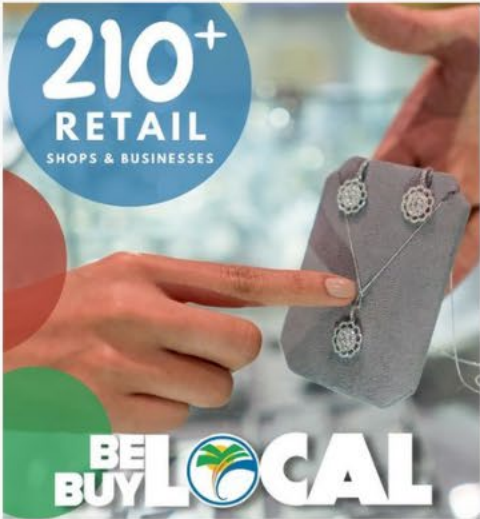
CAPITAL IMPROVEMENT PROJECTS

Major Projects

- Design for reclaim Water Main Extension to the Sports Complex is 100% complete.
- Completion of Belle Terre & East Hampton Blvd Turn Lane.
- Streetlighting Design completed for Sesame Blvd & Easthampton Blvd.
- Annual Asphalt Milling and Resurfacing program.
 - City completed paving of five arterial roadways: Sesame Blvd, Seminole Woods Blvd, Matanzas Woods Parkway (US 1 to Luther Drive), Easthampton Blvd, and Belle Terre BLVD (US 1 to State Road 100 [Moody Blvd])

Swale/Drainage Work Order Inspection	1,414
Pipe Projects Completed	53

ECONOMIC VIABILITY



Advent Health

In 2023, we celebrated the grand opening of Advent Health on Palm Coast Parkway creating over 600 jobs right here in Palm Coast and addressing the health demands of our growing and aging community.



BJ's Wholesale construction is already underway with a planned opening for 2024! Other shops at the center include a Long Horn Stake House, Millers Ale House, and more!



Palm Coast is pleased to have renewed its agreement to offer a wide variety of assistance to local businesses through the Florida Small Business Development Center (FSBDC).



Shopping locally in Palm Coast creates jobs, funds community projects, and reduces property taxes by returning a portion of sales tax from purchases within city limits.

RECREATION



COMING IN 2024

- Mayor's Health & Wellness Challenge
- Tunnel to Towers
- State of the City
- Arbor Day
- Egg'stravaganza
- Food Truck Tuesdays
- Memorial Day
- 4th of July Celebration
- NCAA Youth Sports Clinic
- Feet to Feast 5K
- Starlight Parade
- City of Palm Coast 25th Anniversary Celebration

COMMUNICATIONS

EMERGENCY COMMUNICATIONS

Emergency Communications were vital during the challenging events of Hurricanes Ian, Nicole, Idalia, and the tornado that touched down in October 2023. Throughout these emergencies, Communications prioritized transparent and timely communication, keeping residents informed about evacuation procedures, shelter, PEP tanks, swales, safety measures, unlicensed contractors and real-time updates. They worked collaboratively with Flagler County and leveraged various channels, including social media, press releases, and the city's official website, disseminating critical information for public safety.



COUNTYWIDE COLLABORATION

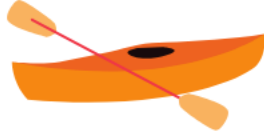
The City's Communications Department formed the Flagler County Crisis Communications Team in Aug. 2022. It is comprised of Flagler County, all municipalities, FCSO, BPD, FBPD, Flagler Schools, AdventHealth, and the Health Dept. The team meets quarterly for training, collaboration, networking, cross sharing, and to discuss best practices.



COMING IN 2024



Opening of the
Southern
Recreation Center



Phase 2 of
Waterfront Park
Enhancements



Improvements
to James F.
Holland Park
Splash Pad



Major Upgrades
to City
Infrastructure



Design and
Construction of
Fire Station 22 &
26



Palm Coast Comprehensive Plan

The Palm Coast Comprehensive Plan guides decisions on development, shaping neighborhoods, businesses, growth, and the environment for 20 years. It reflects the community's vision, meets legal requirements, and involves residents.

Mar
2024

Update Workshop

- City Council and PLDRB Joint meeting with update on findings from community and stakeholders regarding issues and topics
- Open house with all residents

May
2024

Update Workshop

- City Council and PLDRB Joint meeting with presentation on potential GOPs
- Open house with all residents

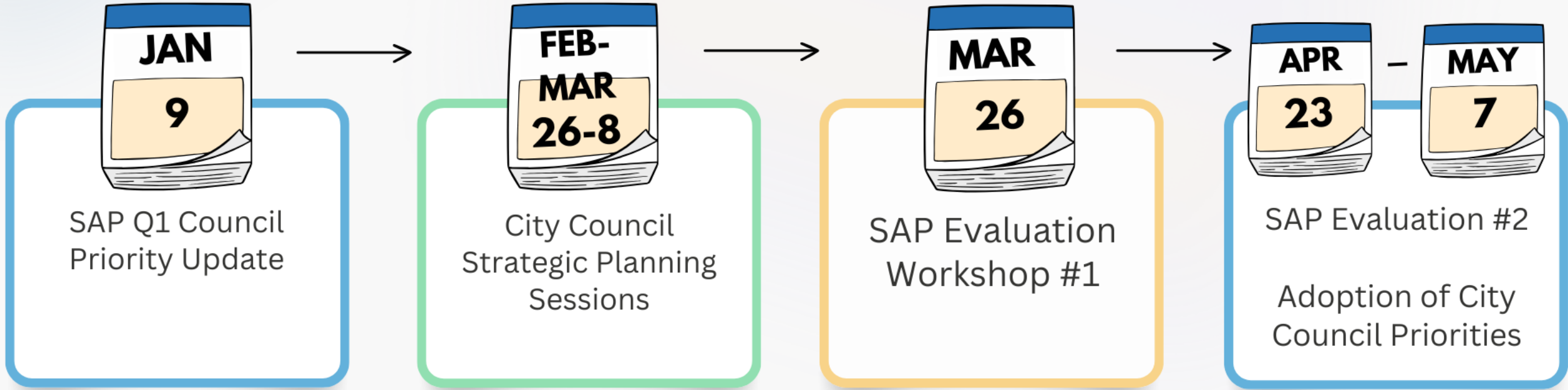
Ju/
2024

Update Workshop

- Recommendation public hearing with PLDRB

Get Involved!

Visit palmcoast.gov to share your vision for Palm⁷⁷Coast!





Strong Resilient Economy

Town Center should promote a home for arts & culture, including opportunities for performance, display, and creative expression.

A. Staff to investigate grant opportunities and other funding sources.

Project Manager	Parks and Recreation
Projected Budget	\$100,000
Funding Source	Capital Projects Fund
Estimated Staff Hours	100
Completion Year	Ongoing

Achievements & Anticipated Results

Our projected outcomes involve staff investigating grant opportunities and other funding sources, partnering with United We Art to develop a conceptual site plan and phased approach for the Events Center, and conducting a comprehensive business plan.



Strong Resilient Economy

Palm Coast brands its' future as a “City on the Rise” to include becoming a regional model for medical training and careers.

Project Manager	Economic Development
Projected Budget	\$98,000
Funding Source	Economic Development
Estimated Staff Hours	210
Completion Year	Ongoing

Achievements & Anticipated Results

Our progress to date launching the targeted industry feasibility study, meetings with a National Healthcare Real Estate Development company exploring new markets in Florida and facilitating the first Healthcare Roundtable with our higher education and medical partners.

Our projected outcomes include the creation of branding and marketing materials for the healthcare industry sector, the execution of a targeted industry feasibility study, and communication with higher education institutions to encourage the expansion of program offerings.



Strong Resilient Economy

Develop economic opportunity tools and communication strategies to support and sustain small businesses.

- A. Create a business recruitment package that includes incentives to diversify our business offerings in our community.
- B. Develop a fast-tracking process to cut red tape, minimize delays in opening, and make more financially feasible.
- C. Focus on commercial development including retail and restaurants in the Town Center core.

Project Manager	Economic Development
Projected Budget	\$168,000
Funding Source	Economic Development
Estimated Staff Hours	225
Completion Year	Ongoing

Achievements & Anticipated Results

This is a new priority for FY 24.

Our projected outcomes involve re-engaging with SBDC for small business support and financial resources, securing incentives funding for business recruitment and Town Center core development, collaborating with Community Development to analyze processes and re-evaluate development review procedures, increasing promotion of the BRX program, and strengthening communication with stakeholders. Additionally, we aim to collaborate with staff to develop an online Business Tax Receipt application.



Strong Resilient Economy

Palm Coast’s future expansion is guided by master planning for smart, managed growth.

A. Staff to develop an infrastructure plan to include conservation, public safety, water resources, transportation and economic resiliency.

B. Create a communications strategy to promote business recruitment and community benefits.

Project Manager	Economic Development
Projected Budget	\$146,300
Funding Source	General Fund
Estimated Staff Hours	720
Completion Year	October 2024

Achievements & Anticipated Results

Our progress to date includes the modification of priorities for FY 24, with the approval of a Comprehensive Plan Update Consultant during the June 20th City Council Meeting.

The projected outcomes involve delivering a feasibility study for a youth sports activity center and completing a community dialogue and vision report that will serve as the foundation for updating the Goals, Objectives, and Policies in the Comprehensive Plan.



Strong Resilient Economy

Conduct analysis of new/untapped revenue sources to help lessen reliance on residential property taxes and relieve burden on residential homeowners.

Project Manager	Financial Services
Projected Budget	\$0
Funding Source	General Fund
Estimated Staff Hours	80
Completion Year	June 2024

Achievements & Anticipated Results

Progress to date includes a city staff presented to City Council during the budget process. City Council took no further action.



Strong Resilient Economy

Millage rate should be revenue neutral for taxpayers.

Project Manager	Financial Services
Projected Budget	\$0
Funding Source	N/A
Estimated Staff Hours	0
Completion Year	September 2023

Achievements & Anticipated Results

This is a new priority for FY 24.

The projected outcomes include conducting a budget review with the City Manager and Departments, as well as delivering presentations to the Council for TRIM guidance, Property Tax, and Millage Rate.



Strong Resilient Economy

Staff to conduct an analysis of commercial solid waste hauling.

Project Manager	Public Works
Projected Budget	\$85,000
Funding Source	General Fund
Estimated Staff Hours	600
Completion Year	Q4 2024

Achievements & Anticipated Results

Our progress to date includes establishing a new priority for FY 24 by researching the current process of collecting franchise fees from commercial haulers operating within the City.

City staff will look for direction from City Council during the presentation on Jan. 9th.



Safe & Reliable Services

Ensure that the Maintenance and Operations Facility is top priority facility project and commence with initial improvements based on Capital Improvement Plan timeline.

Project Manager	Stormwater & Engineering
Projected Budget	N/A
Funding Source	Multiple Source
Estimated Staff Hours	N/A
Completion Year	Ongoing

Achievements & Anticipated Results

Our progress to date includes the completion of the FY21 – FY22 Master Plan, which was presented to the City Council, leading to the approval of both the plan and the contracts for design and construction management. Currently underway is the FY22/23 Design – Phase One, involving the search for a Construction Management firm and Design Consultant team, with plans to bring contracts to the City Council for approval. The Schematic Design is scheduled to be presented to the City Council.

Looking ahead, our projected outcomes involve the annual update of the Capital Improvement Plan with construction costs and revenue. In FY 24, we plan to commence site work and infrastructure, followed by the initiation of the Fleet Facility in FY 25, with the goal of officially opening the facility in FY 26.



Safe & Reliable Services

Identify local recreation demands (i.e. aquatics, fields, senior services, etc.) to balance the need of regional activity centers.

A. Prioritize projects on the Parks & Recreation Capital Improvement Plan.

B. Evaluate grants for various park projects.

Project Manager	Parks and Recreation
Projected Budget	\$0
Funding Source	Capital Project Funds
Estimated Staff Hours	200
Completion Year	September 2023

Achievements & Anticipated Results

City Council adopted the Parks Master Plan on Dec 5th. City staff will work towards executing the Master Plan. City staff will research grants for Capital projects.



Safe & Reliable Services

Seek opportunities for the Community Center to help relieve parking pressures through the following approaches.

A. Evaluate the option to repurpose FS 22, to preserve the Historical value and expand the visitor awareness of Palm Coast.

Project Manager	Parks and Recreation
Projected Budget	TBD
Funding Source	Capital Project Funds
Estimated Staff Hours	400
Completion Year	June 2023

Achievements & Anticipated Results

Our progress to date includes evaluating the current conditions of Fire Station 22 and generating cost estimates. Additionally, we have completed draft drawings for new parking lot options.



Safe & Reliable Services

Evaluate hiring a dedicated grant writer or contracted consultant for the City to identify and secure the multitude of grants from federal and state agencies.

Project Manager	Administration
Projected Budget	TBD
Funding Source	General Fund
Estimated Staff Hours	TBD
Completion Year	September 2023

Achievements & Anticipated Results

This is a new priority for FY 24.

City staff will include grant research and application in consultant projects. A new FTE was not funded in the FY 24 budget.



Safe & Reliable Services

Continue to focus on residential safety, conduct a comprehensive approach to neighborhood safety.

- A. Work with FCSO to identify and enforce problem areas
- B. Evaluate legality and possibility of lowering residential street speed limits
- C. Explore what speed-tracking devices have successfully reduced residential speeds in comparable cities and communities.

Project Manager	Administration/Engineering
Projected Budget	\$50,000-\$150,000
Funding Source	General Fund
Estimated Staff Hours	150
Completion Year	September 2024

Achievements & Anticipated Results

Our progress to date includes ongoing bi-weekly meetings with the FCSO on traffic safety issues. Looking ahead, our projected outcomes involve obtaining a proposal from a consultant to conduct an analysis on speed-tracking devices and a speed study to determine speed limits for residential roadways.

Additionally, we plan to research funding grants through the River to Sea TPO.



Civic Engagement

Encourage residents to learn more about their community and our history.

Project Manager	Parks & Recreation
Projected Budget	\$0
Funding Source	N/A
Estimated Staff Hours	150
Completion Year	Ongoing

Achievements & Anticipated Results

This is a new priority for FY 24.

Our projected outcomes include establishing a partnership with the Palm Coast Historical Society to host a historical speaker series and a Palm Coast Founders Day event. We plan to provide advertising support for the historical society through various channels such as social media, posters, the monthly senior newsletter, E-news, and the activity guide. Additionally, we aim to present the history of Palm Coast at the City of Palm Coast Citizen Academy and update the City of Palm Coast decades through the years exhibit located in the Community Wing.



Civic Engagement

Create an opportunity for residents to participate in Town Hall style meetings. Evaluate options for in-person and virtual formats.

Project Manager	Communications & Marketing
Projected Budget	\$1,000
Funding Source	General Fund
Estimated Staff Hours	250
Completion Year	Ongoing

Achievements & Anticipated Results

This is a new priority for FY 24.

Our projected outcomes include planning, coordinating, and facilitating one town hall event quarterly, with each City Council Member encouraged to host one annually. We will coordinate with each City Council Member to organize their respective town hall, schedule, plan, and promote the event through print, digital, and audio formats. Success will be evaluated based on attendance, audience engagement, and feedback.



Sustainable Environment & Infrastructure

Collaborate with FPL and other community partners to provide electric vehicles fast charging stations across multiple locations in the City.

A. Explore ways to add revenues for street improvements/enterprise fund through user fees for EV charging stations.

Project Manager	Administration
Projected Budget	N/A
Funding Source	N/A
Estimated Staff Hours	TBD
Completion Year	May 2024

Achievements & Anticipated Results

Our progress to date includes modifying priorities for FY 24 and initiating the LITE TEAM project for FY 23. Staff presented to the City Council on 6/6, proposing a grant opportunity to add charging stations to various locations in the city. Staff will work on the direction provided by the City Council in FY 24.

Looking ahead, our projected outcomes involve presenting the final analysis to the City Council in FY 24.



Sustainable Environment & Infrastructure

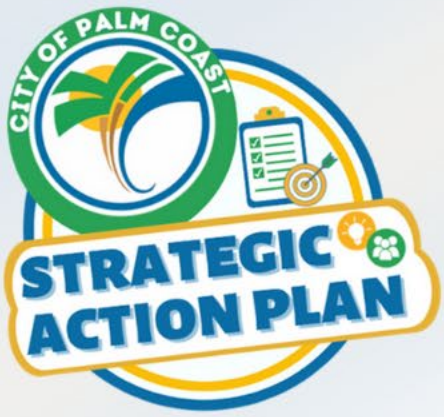
Develop a plan for maintenance of the saltwater canals.

Project Manager	Engineering
Projected Budget	\$0
Funding Source	TBD
Estimated Staff Hours	TBD
Completion Year	September 2023

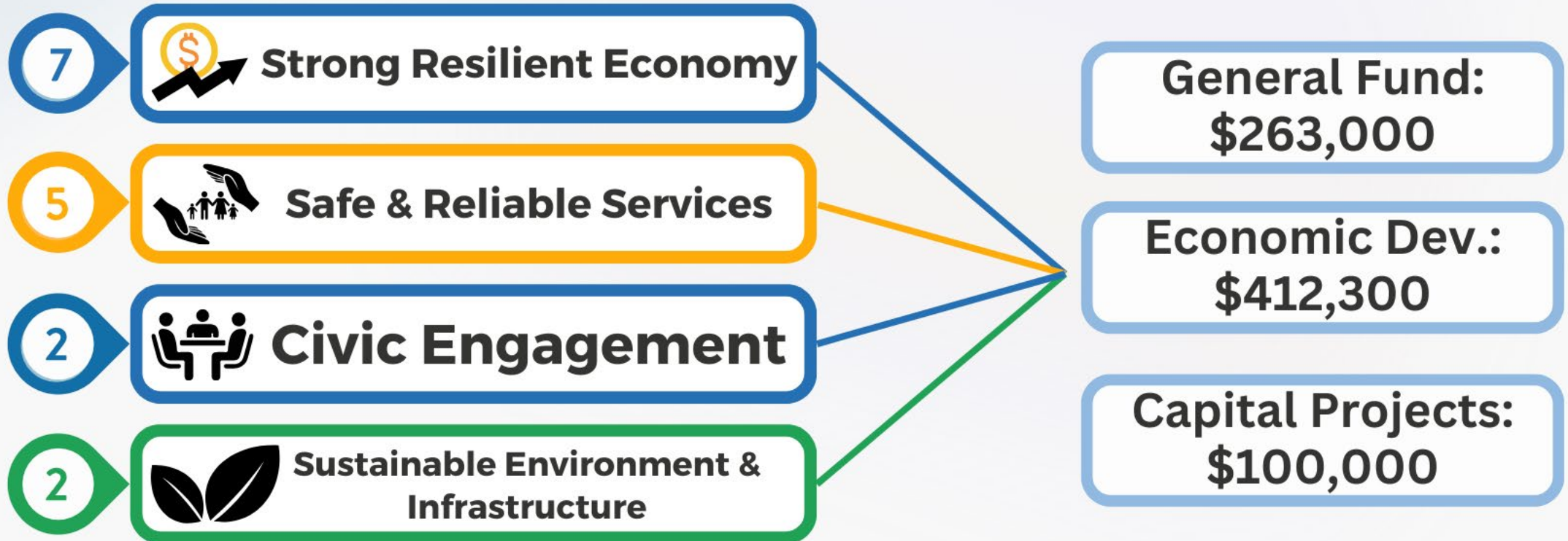
Achievements & Anticipated Results

City Council received a presentation on the findings of the assessment. Upon conclusion, the City Council did not provide funding for the next phase to include design and permitting.

Staff will research potential grant opportunities with FIND and other sources.



SAP SUMMARY



City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department	CONSTRUCTION MANAGEMENT & ENGINEERING	Amount	\$96,745.05
Division	ENGINEERING	Account #	10015509 034000
Subject: RESOLUTION 2024-XX APPROVING A CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND FLORIDA PARK DRIVE STUDY			
Presenter: Carl Cote, Director of Stormwater & Engineering			
Attachments:			
<ol style="list-style-type: none"> 1. Presentation 2. Resolution 3. Contract 4. Notice of Intent to Award 5. Project Overview 6. Proposal 			
Background:			
Council Priority:			
C. Safe and Reliable Services			
<p>City of Palm Coast Engineering proposes to enter into a contract with Kimley-Horn to generate an engineering study. The study will address two topics which are important to the City Council:</p> <ol style="list-style-type: none"> 1. Speed Limit Posting of Residential Streets 2. Traffic Concerns on Florida Park Drive 			
<u>Study: Speed Limit Posting of Residential Streets</u>			
<p>Specific Florida statutes define the speed limit a government in Florida is allowed to post on a residential roadway. A study must be performed that indicates another speed limit may be appropriate as an alternate posting.</p>			
<u>Study: Traffic Concerns on Florida Park Drive</u>			
Residents have asked for studies related to Florida Park Drive			
<ol style="list-style-type: none"> a. The City has a median design completed and on the shelf for Florida Park Drive. <ol style="list-style-type: none"> i. What would be the cost to build that project? ii. How much speed reduction can the completed project be expected to generate? iii. How much annual crash reduction could be projected? 			

- b. The Manual of Uniform Traffic Control devices requires an ALL-WAY Stop Warrant to be studied and met prior to installation of an intersection all-way stop control
 - i. What are the two highest volume intersecting streets for Florida Park Drive?
 - ii. Do either of those intersections qualify for an all-way stop warrant?

The request is for City Council to approve the contract amount for City Engineering to complete this study. The results are scheduled for a presentation to Council in an April or May 2024 meeting.

In accordance with the City’s Purchasing Policy, staff advertised (RFSQ-SWE-23-68) and solicited bids for a residential speed limit posting study. The City received three (3) bids that were responsive and responsible. The project bid overview and notice of intent to award are attached. Staff recommends approving a contract with Kimley-Horn.

Source of Funds Worksheet FY 24	
CM & Engineering -10015509-034000	\$150,000.00
Total Expended/Encumbered to Date	\$0.00
Pending Work Orders/Contracts	\$0.00
Current (WO/Contract)	<u>\$96,745.05</u>
Balance	\$53,254.95

Funds for this project are budgeted out of the Construction and Engineering fund for FY24.

Recommended Action:
ADOPT RESOLUTION 2024-XX APPROVING A CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND FLORIDA PARK DRIVE STUDY



Residential Speed Limit Posting Study

FY24 Strategic Action Plan

SAFE & RELIABLE SERVICES

Continue to focus on residential safety, and conduct a comprehensive approach to neighborhood safety.

**N
E
W**



a. Evaluate legality and possibility of lowering residential street speed limits.

b. Explore what tracking devices have successfully reduced residential speeds in [redacted] and communities.

c. Work with [redacted] to identify and enforce problem

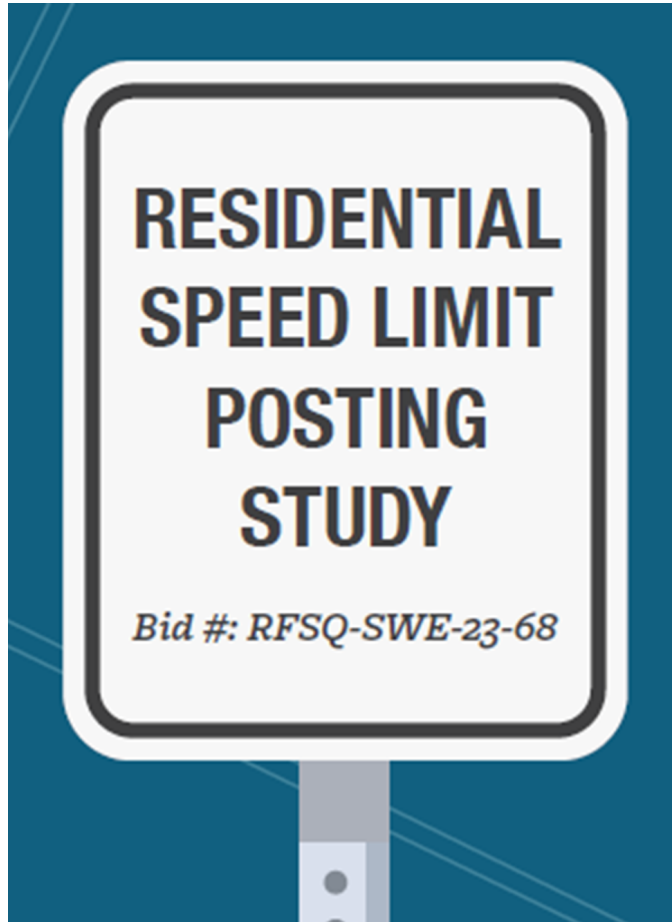
- City Council Adopted Council Priority on May 2, 2023
- Budgeted in FY24 Stormwater & Engineering



PRIORITY GOAL UPDATE



Consultant Selection Process



- ▶ Request for Qualifications (RFQ) Issued 9/27/23
- ▶ Three (3) Proposals Received on 11/9/23
- ▶ Kimley-Horn and Associates, Inc., was selected as the top ranked firm by the evaluation team and a Notice of Intent to Award was issued 11/27/23
- ▶ Negotiated Scope and Fee Proposal (two parts)
 - ▶ Residential Speed Limit Posting
 - ▶ Florida Park Drive Evaluation



Residential Speed Study



Florida Statute 316.183 states:

- ▼ Residential roads SHALL be posted at 30 mph

EXCEPT:

- ▼ Where an investigation determines lower speed is appropriate
 - May be 25 MPH
 - May be 20 MPH



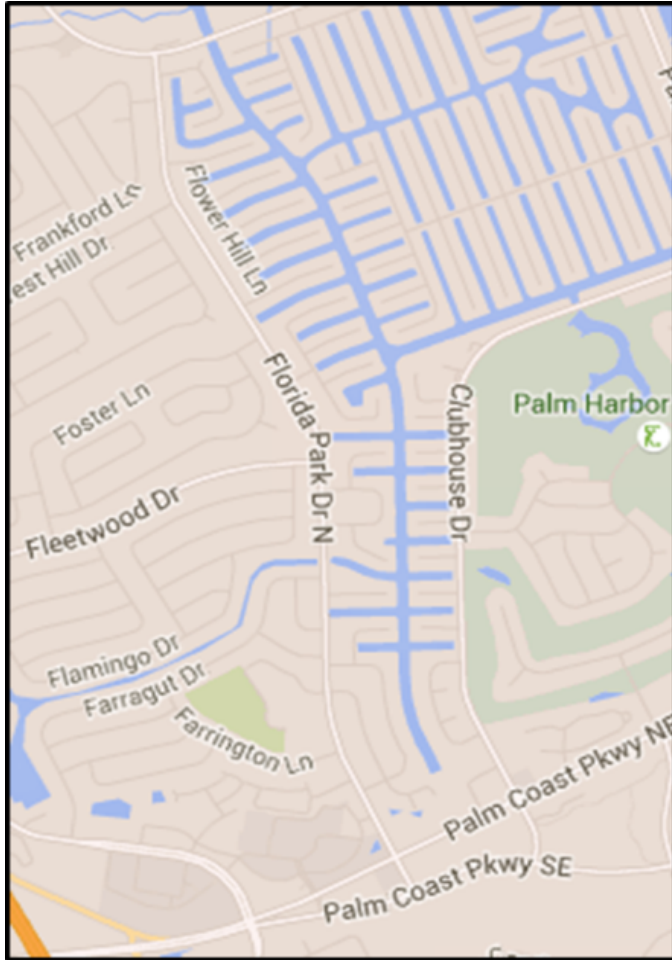
Residential Speed Limit Posting Study

Scope of Work:

- Approach: Florida Department of Transportation (FDOT) Speed Zoning for Highways, Roads, and Streets manual (August 2018) methodology for areawide “blanket” speed restrictions



Florida Park Drive



Summary of Council Actions

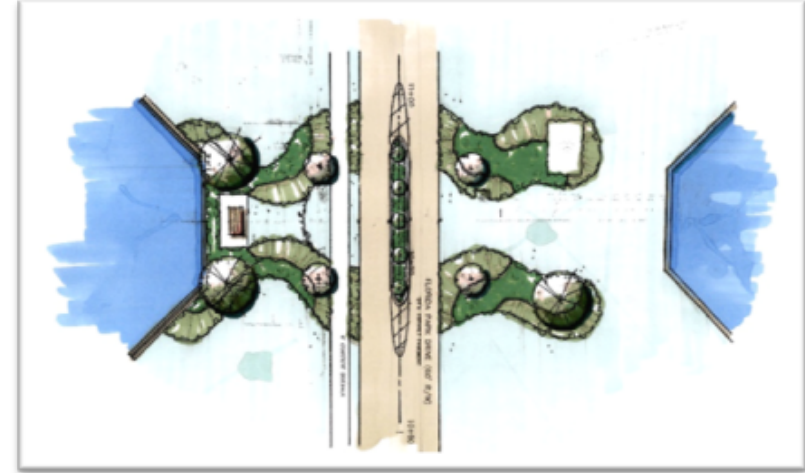
- ✓ Speed Limit & Radar Enforced Signage
- ✓ Truck Restriction
- ✓ Noise Study
- ✓ Air Quality Study
- ✓ Landscape Buffers
- x Landscape Medians (2 locations)
- ☐ Striping (narrow lanes with future resurfacing) –
Not Currently Funded in 5-Year Pavement Management Program



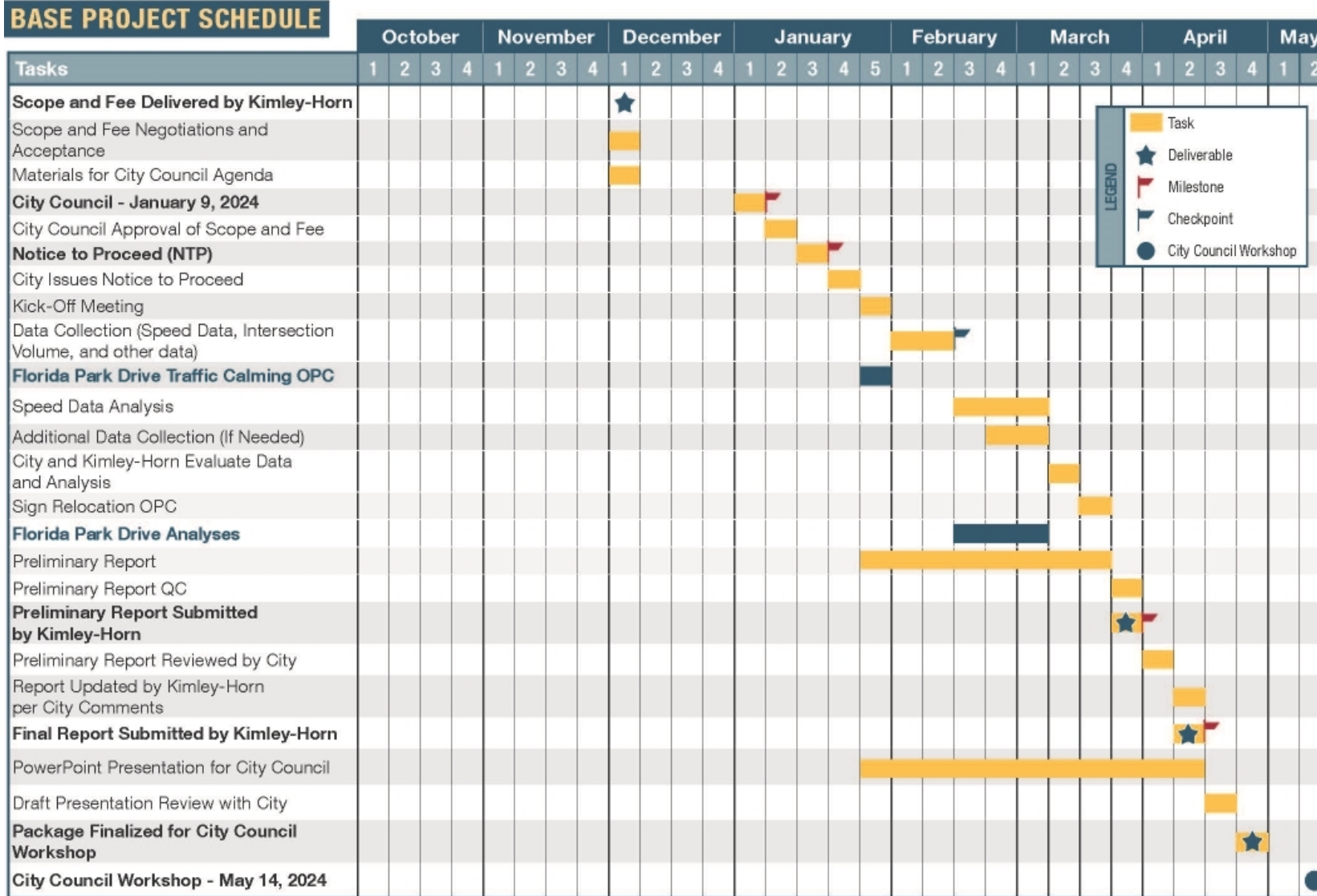
Florida Park Drive

Scope of Work:

- ▼ Traffic Median Analysis
 - Speed Reduction Evaluation
 - Traffic Diversion Evaluation
 - Crash Predication Analysis
- ▼ All-Way Stop Sign Warrant
 - Speed Reduction Evaluation



Project Schedule



Council Action

Approvals:

- ▶ Approve Fee Proposal and Enter into Contract with Kimley-Horn and Associates, Inc., to perform a residential speed limit posting study for a fee of \$63,248.05
- ▶ Approve Fee Proposal and Enter into Contract with Kimley-Horn and Associates, Inc., to perform a Florida Park Drive study for a fee of \$33,745.10



RESOLUTION 2024-____
RESIDENTIAL SPEED LIMIT POSTING STUDY
FLORIDA PARK DRIVE STUDY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND A FLORIDA PARK DRIVE STUDY; PROVIDING LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR FUTURE AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Kimley-Horn desires to provide engineering consultant services for a residential speed posting study and a Florida Park Drive study for the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to approve a contract with Kimley-Horn for 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 the contract with Kimley-Horn for a residential speed limit posting study and a Florida Park Drive study, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 3. FUTURE AMENDMENTS. The City Manager, or designee is hereby authorized to approve any future amendment to the Master Services Agreement for changes totaling less than \$50,000.00 as long as this amount does not exceed the line-item limit for the budgeted purchase. Further, the City Manager has the authority to execute

amendments to the Master Price Agreement on behalf of the City for any other changes that may be necessary.

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 16th day of January 2024.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

JENNIFER NIX, CITY ATTORNEY

Attachments: Exhibit A – Contract Proposal

MASTER SERVICES AGREEMENT
(Professional Services)

THIS MASTER SERVICES AGREEMENT ("Agreement") made and entered into this ____ day of _____, 202__ ("Effective Date"), between KIMLEY-HORN AND ASSOCIATES, INC., whose place of business is 1530 Cornerstone Boulevard, Building 1, Suite 200, Daytona Beach, Florida 32117 ("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 **RESIDENTIAL SPEED LIMIT POSTING STUDY SERVICES** from a competent and qualified supplier and has conducted a formal Request for Statement of Qualifications # RFSQ-SWE-23-68 (RFSQ) 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 RFSQ and desires to render said services to CITY 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.** Compensation to SUPPLIER for the services performed on each Work Order shall be as set forth in the Work Order/Change Order. 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.
- 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 and hold harmless CITY, and its officers and employees, from and against liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent the foregoing are caused by the negligence, recklessness, or intentionally wrongful conduct of the SUPPLIER and other persons employed or utilized by the SUPPLIER in performance of this Agreement, including damage to persons or property. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein or benefits payable by or for SUPPLIER or its agents under worker's compensation acts, disability benefits acts, or other employee benefits acts. This indemnification provision shall survive any termination or expiration of this agreement. PURSUANT TO FLORIDA STATUTES SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IF THE REQUIREMENT OF THIS SECTION ARE MET.
- 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.
- iv. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

12. CONTRACT DOCUMENTS. The RFSQ and all submissions prepared by SUPPLIER in response to the RFSQ 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. 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:
Stewart Robertson
Kimley-Horn and Associates, Inc.
1530 Cornrestone Blvd. Bld 1, Ste 200
Daytona Beach, Florida 32117

- 20. 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.

21. 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.

22. 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.

23. 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.

24. 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

KIMLEY-HORN AND ASSOCIATES, 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

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.



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: Residential Speed Limit Posting Study - RFSQ-SWE-23-68

Date: 11/27/2023

Appeal Deadline: Appeals must be Filed by 5:00 PM on 11/30/2023

Firm	Points
Kimley-Horn.	88.67
England-Thims & Miller, Inc.	81.33
LTG, Inc.	53.67

The intent of the City of Palm Coast is to award Residential Speed Limit Posting Study to Kimley-Horn.

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

For questions regarding the NOIT please contact Procurement Coordinator 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) shall constitute a waiver of the protest proceedings.





RFSQ-SWE-23-68 - RESIDENTIAL SPEED LIMIT POSTING STUDY

Project Overview

Project Details	
Reference ID	RFSQ-SWE-23-68
Project Name	RESIDENTIAL SPEED LIMIT POSTING STUDY
Project Owner	Shannon Nolan
Project Type	RFSQ
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	Florida Statutes provide guidance for posting of speed limits on residential roadways. Those guidelines refer to an engineering study in cases where a speed limit lower than 30 mph is posted for residential or central business district roadways.
Open Date	Sep 27, 2023 8:00 AM EDT
Intent to Bid Due	Nov 08, 2023 2:00 PM EST
Close Date	Nov 09, 2023 2:00 PM EST

Highest Scoring Supplier	Score
Kimley-Horn	86.67 pts

Seal status



Requested Information	Unsealed on	Unsealed by
RFSQ Proposal	Nov 09, 2023 2:41 PM EST	Shannon Nolan
Required Forms 1 - 5	Nov 09, 2023 2:41 PM EST	Shannon Nolan
Addendum (Signed and Dated)	Nov 09, 2023 2:41 PM EST	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?
Tyler Gibson	Nov 14, 2023 7:08 AM EST	No
Michael Grunewald	Nov 16, 2023 4:02 PM EST	No
Vineesh Crawford	Nov 21, 2023 8:21 AM EST	No
Shannon Nolan	Nov 09, 2023 2:57 PM EST	No



Project Criteria

Criteria	Points	Description
Administrative Review	Pass/Fail	Check for submission as requested and completeness
Project Understanding and Proposal	10 pts	This section shall establish that the Proposer understands the City's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements
Experience with Similar Projects	20 pts	Provide a listing of similar projects, maximum of three, by a team member who is specifically part of the team proposed in the response. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets



		Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements
Project Study	30 pts	Provide a detailed Study. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements
Project Team	10 pts	Identify the project team members, including major and minor sub-consultants, and provide their contact information and technical resumes. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements
Project Schedule	30 pts	Provide detail that identifies anticipated major milestones and their associated phasing as well as the allocation of existing resources. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below



		Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements
Total	100 pts	



Scoring Summary

Active Submissions

	Total	Administrative Review	Project Understanding and Proposal	Experience with Similar Projects	Project Study
Supplier	/ 100 pts	Pass/Fail	/ 10 pts	/ 20 pts	/ 30 pts
Kimley-Horn	86.67 pts	Pass	8.667 pts	16 pts	25 pts
England-Thims & Miller, inc.	81.33 pts	Pass	8.667 pts	15.67 pts	22.67 pts
LTG, Inc.	53.67 pts	Pass	6.667 pts	13.33 pts	15 pts



	Project Team	Project Schedule
Supplier	/ 10 pts	/ 30 pts
Kimley-Horn	9.333 pts	27.67 pts
England-Thims & Miller, inc.	8.333 pts	26 pts
LTG, Inc.	9.333 pts	9.333 pts



December 4, 2023

Mr. Michael Grunewald
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

RE: Residential Speed Limit Posting Study

Project Understanding

It is our understanding that the City of Palm Coast wants to perform a speed limit posting study on their residential and Central Business Districts (CBD) roadways as depicted in the RFQ document (RFSQ-SWE-23-68). Kimley-Horn understands the City wants a cost estimate for replacing speed limit signs identified in the speed limit posting study.

Kimley-Horn understands the City wants an assessment of the completed design for central diversion medians (traffic calming device) at two (2) locations on Florida Park Drive to determine the following: probable speed reduction, traffic diversion impact, crash prediction analysis, and identify the impact on the travel time of an emergency vehicle along the segment. Kimley-Horn understands the City wants an all-way stop sign warrant for two (2) intersections along Florida Park Drive and a cost estimate for the construction of the Florida Park Drive central diversion median.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1: Speed Limit Posting Study

Task 1A: Project Kickoff – Kimley-Horn will conduct one (1) kickoff meeting with the City to discuss and confirm the overall project objectives and collaborate on determining the field speed sample locations. Kimley-Horn, along with City staff, will consider data collection locations based on the local street network, including block length, street connectivity, neighborhood access points, and boundaries.

Following the meeting, Kimley-Horn will develop a speed data collection plan (map) illustrating the locations where speed will be measured on the roadways within the City. Contiguous neighborhoods for inclusion within each areawide “blanket” speed restriction will be identified and mapped. Kimley-Horn will submit the speed data collection plan to city staff for review before collecting the data.

Task 1B: Data Collection – Upon city approval of the locations, Kimley-Horn will collect traffic speed and volume counts at up to fifty (50) locations within the City. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days when local schools are in normal operation. Data collection reports for each location will be included in the analysis documentation. Kimley-Horn will perform a windshield field visit to assess traffic behavior. Additional data collection could be performed under **Tasks 1F and 1G**.

Kimley-Horn will develop a list of city streets within each neighborhood that are not subject to the areawide “blanket” speed study due to possessing a type and character different from the sample streets selected for data collection.

Task 1C: Analysis – Speed limit analysis will be performed for the identified streets to determine if the criteria outlined in Section 316.189 F.S. support creating an areawide speed limit. Kimley-Horn will analyze common descriptive statistical measures utilized in determining prevailing speeds. Following the analysis, Kimley-Horn will meet with City staff to discuss the findings. Kimley-Horn will perform up to three (3) meetings, in addition to the kickoff meeting, for a total of four (4) meetings as part of **Task 1**.

Task 1D: Documentation – Kimley-Horn will develop a report documenting all data collection efforts, data, analysis, conclusions, and recommendations described in the preceding tasks. Kimley-Horn will prepare the draft report documentation for submittal to City staff. Kimley-Horn will address up to two (2) rounds of comments.

Task 1E: City Council Presentation Materials – Kimley-Horn will prepare a PowerPoint Presentation summarizing the analysis and findings of the speed limit posting study. Kimley-Horn will present the findings to the City Council during one (1) regularly scheduled meeting.

Task 1F: Additional Data Collection #1 – If requested by the City, Kimley-Horn will collect traffic speed and volume counts at up to twenty-five (25) locations within the City, in addition to **Task 1B**. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days, when local schools are in normal operation.

Task 1G: Additional Data Collection #2 – If requested by the City, Kimley-Horn will collect traffic speed and volume counts at up to twenty-five (25) locations within the City, in addition to **Tasks 1B and 1F**. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days, when local schools are in normal operation.

Task 2: Florida Park Drive (FPD) Study

Task 2A: FPD Speed Reduction Evaluation – Kimley-Horn will evaluate the speed differential along Florida Park Drive as a result of the traffic calming design provided by the City. Collected speed data will be compared to projected speed with the traffic median design along FPD. The forecasted speed along FPD and at the traffic calming locations will be estimated by performing travel time runs at up to two (2) similar locations.

Task 2B: FPD Traffic Diversion – Kimley-Horn will evaluate the FPD median design for probable traffic diversion to other roadways. Kimley-Horn will review alternate routes to FPD and compare travel times. Kimley-Horn will collect intersection traffic counts at up to two (2) intersections.

Task 2C: FPD Crash Prediction Analysis – Kimley-Horn will review the most recent five (5) years of crash data along FPD and perform a crash prediction analysis in accordance with the *Highway Safety Manual* (HSM) methodology. Kimley-Horn will review HSM for countermeasure and crash reduction

factors appropriate to the proposed median designs. The analysis will summarize existing total crashes and projected crashes with the traffic calming in place.

Task 2D: All-way Stop Sign Warrant – Kimley-Horn will perform an all-way stop sign warrant at two (2) intersections along FPD. All-way stop sign warrants will be performed in accordance with MUTCD Chapter 2B. Kimley-Horn will collect intersection traffic counts at two (2) intersections for a period of eight (8) hours. Kimley-Horn will perform a field visit to survey the study intersections and document traffic conditions and other roadway and traffic and roadway characteristics. Field visits will be performed by a licensed professional engineer (P.E.). Kimley-Horn will perform an operational analysis at the two (2) study intersections for existing and all-way stop-controlled conditions during the AM (7:00 AM – 9:00 AM) and PM (4:00 pm – 6:00 PM) peak hours of the adjacent street traffic. The operational analysis will be performed based on the *Highway Capacity Manual* (HCM) with the use of *Synchro* software.

Task 2E: FPD Median Additions Opinion of Probable Cost (OPC) – Kimley-Horn will perform an opinion of probable cost (OPC) for the median design along FPD. The OPC will be based on the plan sheets provided by the City. Kimley-Horn will use the latest FDOT unit cost to develop the cost estimate. The OPC will be summarized in a table and included in the report.

Task 2F: Documentation – Kimley-Horn will develop a report documenting all efforts, data, analysis, conclusions, and OPC described in **Tasks 2A** through **Task 2F** to be included as an attachment of the report for **Task 1**. Kimley-Horn will prepare the draft report documentation for submittal to City staff. Kimley-Horn will address up to two (2) rounds of comments.

Task 3: Speed Limit Sign Replacement Opinion of Probable Cost (OPC)

Kimley-Horn will perform a site visit to geolocate the speed limit signs to be replaced. Signage locations will be mapped and illustrated in an exhibit. Kimley-Horn will perform an opinion of probable cost (OPC) for the replacement of the speed limit signs within the neighborhoods of the City as identified in **Task 1**. The OPC will be performed in accordance with the latest FDOT unit cost.

Additional Services

Any services not specifically provided for in the above scope will be considered additional services. Additional services we can provide include, but are not limited to, the following:

- Additional data collection beyond described above
- Additional intersection operational analysis
- Corridor Studies
- Feasibility Analysis
- Conceptual planning and design
- Traffic Signal design

Schedule

Kimley-Horn will provide our services as outlined on the project schedule attached to this proposal.

Fee

Kimley-Horn will perform the services included in the Tasks above for the fee shown below.

	Hours						Fee
	Engineering Intern	Project Manager	Engineer 2	Chief Engineer	Admin Support	Data Collection Fee	
Hourly Rate	\$ 138.94	\$ 178.75	\$ 178.75	\$ 286.02	\$ 95.57	-	
Task 1: Speed Limit Posting Study							\$ 63,248.05
<i>Task 1A: Kick off</i>	4	4		4			\$ 2,414.81
<i>Task 1B: Data Collection</i>	18	9			2	\$ 12,250.00	\$ 16,550.76
<i>Task 1C: Analysis</i>	40	9	9				\$ 8,775.01
<i>Task 1D: Documentation</i>	27	18		9	2		\$ 9,734.09
<i>Task 1E: City Council Presentation Materials</i>	27	18		9	4		\$ 9,925.22
<i>Task 1F: Additional Data Collection #1</i>	9		2		2	\$ 6,125.00	\$ 7,924.08
<i>Task 1G: Additional Data Collection #2</i>	9		2		2	\$ 6,125.00	\$ 7,924.08
Task 2: Florida Park Drive (FPD) Study							\$ 33,497.00
<i>Task 2A: Speed Reduction Evaluation</i>	18	2	4				\$ 3,573.39
<i>Task 2B: FPD Traffic Diversion</i>	18	2	4			\$ 1,000.00	\$ 4,573.39
<i>Task 2C: FPD Crash Prediction Analysis</i>	18	2	9				\$ 4,467.12
<i>Task 2D: All-way Stop Sign Warrant</i>	40	2	9			\$ 2,500.00	\$ 10,023.78
<i>Task 2E: FPD Median Additions OPC</i>	40		9	1			\$ 7,452.30
<i>Task 2F: Documentation</i>	18	4			2		\$ 3,407.02
Task 3: Sign Replacement OPC	27		5	1			\$ 4,931.10
						TOTAL FEE	\$ 101,676.15

Closure

We appreciate the opportunity to provide these services to you and the City of Palm Coast. If you concur with all the foregoing and wish to direct us to proceed with the services, please issue the appropriate work authorization under our existing contract. Fees and times stated in this Scope of Services are valid for sixty (60) days after the date of this letter. Please get in touch with me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Emanuelle D Rodriguez Muñiz, PE (FL, PR)
Project Manager

Michael R. Woodward, P.E.
Associate

CITY OF PALM COAST

A Municipality

By:

Mayor David Alfin

Date:

_____, Witness

(Print or Type Name)

Official Seal:

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If Kimley-Horn initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance

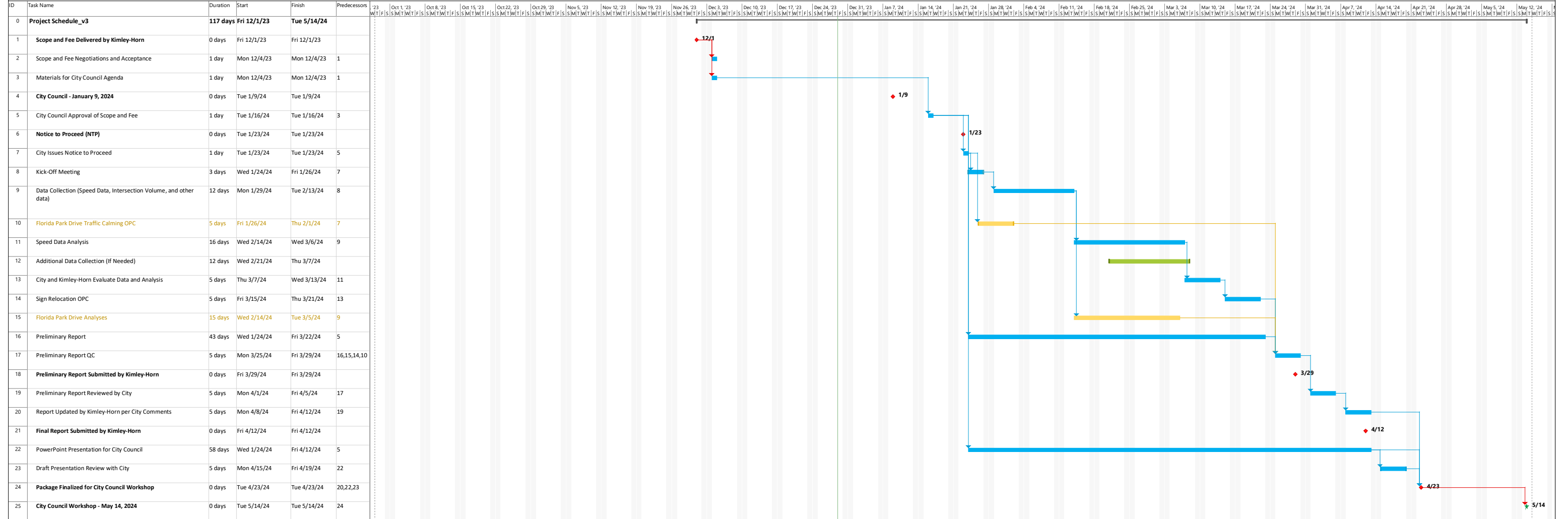
of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.

- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**

- a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

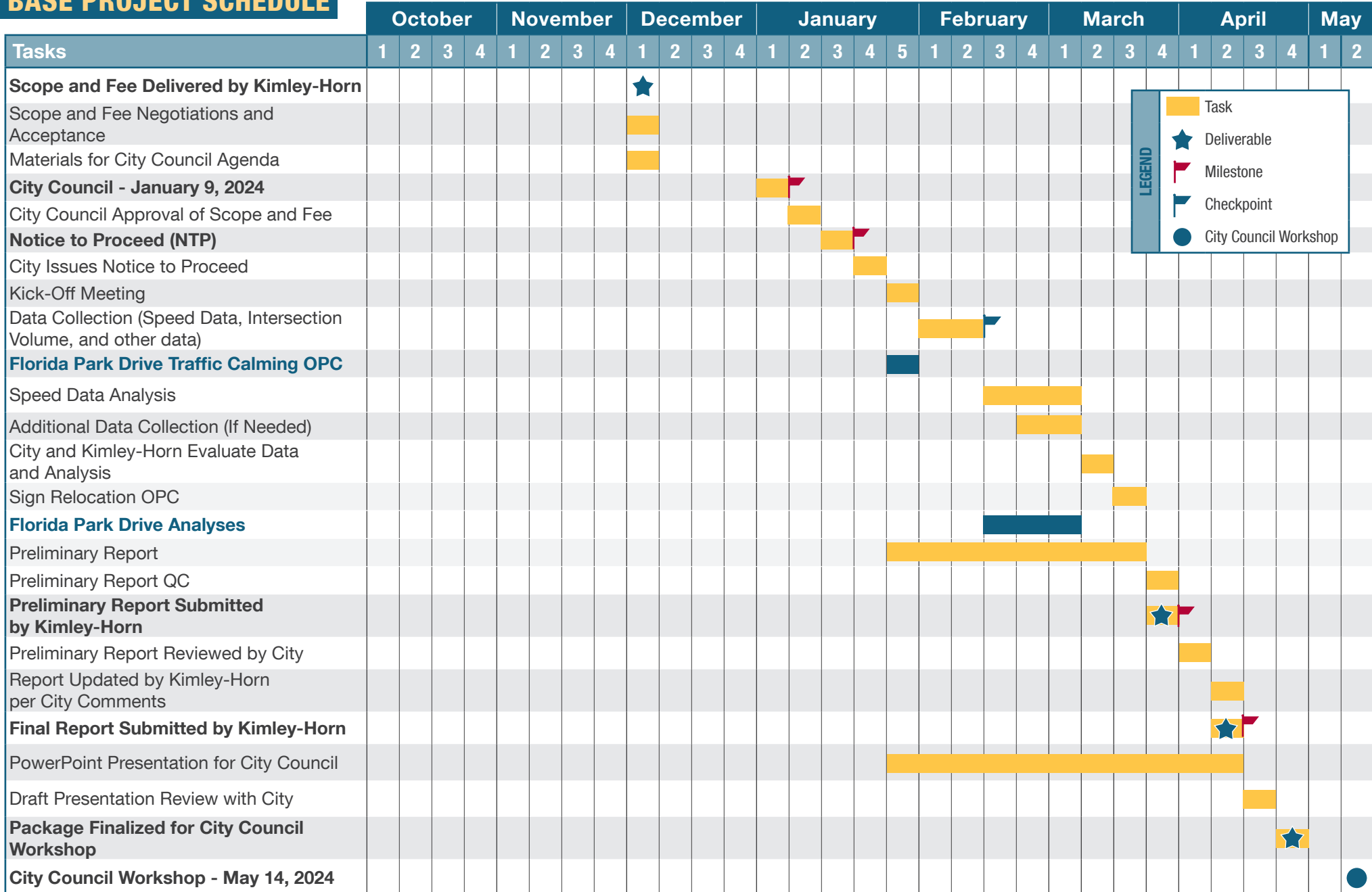
**(20) PURSUANT TO FS 558.0035, EMPLOYEES OF KIMLEY-HORN
MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES
RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**

Project Schedule: Palm Coast Speed Limit Posting Study



RESIDENTIAL SPEED LIMIT POSTING STUDY

BASE PROJECT SCHEDULE



LEGEND

- Task
- ★ Deliverable
- Milestone
- Checkpoint
- City Council Workshop

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department PUBLIC WORKS Division	Amount Account #
Subject: PRESENTATION - STRATEGIC ACTION PLAN PRIORITY: AN ANALYSIS OF COMMERCIAL SOLID WASTE HAULING	
Presenter: Alyssa Roscoe, Residential Collection Supervisor	
Attachments: 1. Presentation	
Background: Council Priority: B. Safe and Reliable Services City staff will present the current processes for Commercial Solid Waste Hauling and then seek guidance from council for future action on this priority.	
Recommended Action: FOR PRESENTATION ONLY	

Strategic Action Plan Priority

An Analysis of Commercial Solid
Waste Hauling



**PUBLIC
WORKS**

Council Priority



STRONG RESILIENT ECONOMY

Staff to conduct an analysis of commercial solid waste hauling.



Pillars of Priorities



STRONG RESILIENT ECONOMY

Support the expansion and smart growth of both population and businesses to ensure success locally as well as regionally.

Improve financial strengths within the City to promote fiscal responsibility and secure future stability.



SAFE & RELIABLE SERVICES

A safe community for all is the catalyst to ensure that residents and regional visitors experience exceptional quality amenities year-round.

Recruiting and retaining a quality, talented workforce to maintain uninterrupted services to the citizens.



CIVIC ENGAGEMENT

Build a cooperative and trusting relationship between the City and the community.

Promote the opportunity for communication between the decision-makers. Enhance existing channels through which accurate and timely information is disseminated from the City.

Increase the public's understanding and support of the City's goals and strategies.



SUSTAINABLE ENVIRONMENT & INFRASTRUCTURE

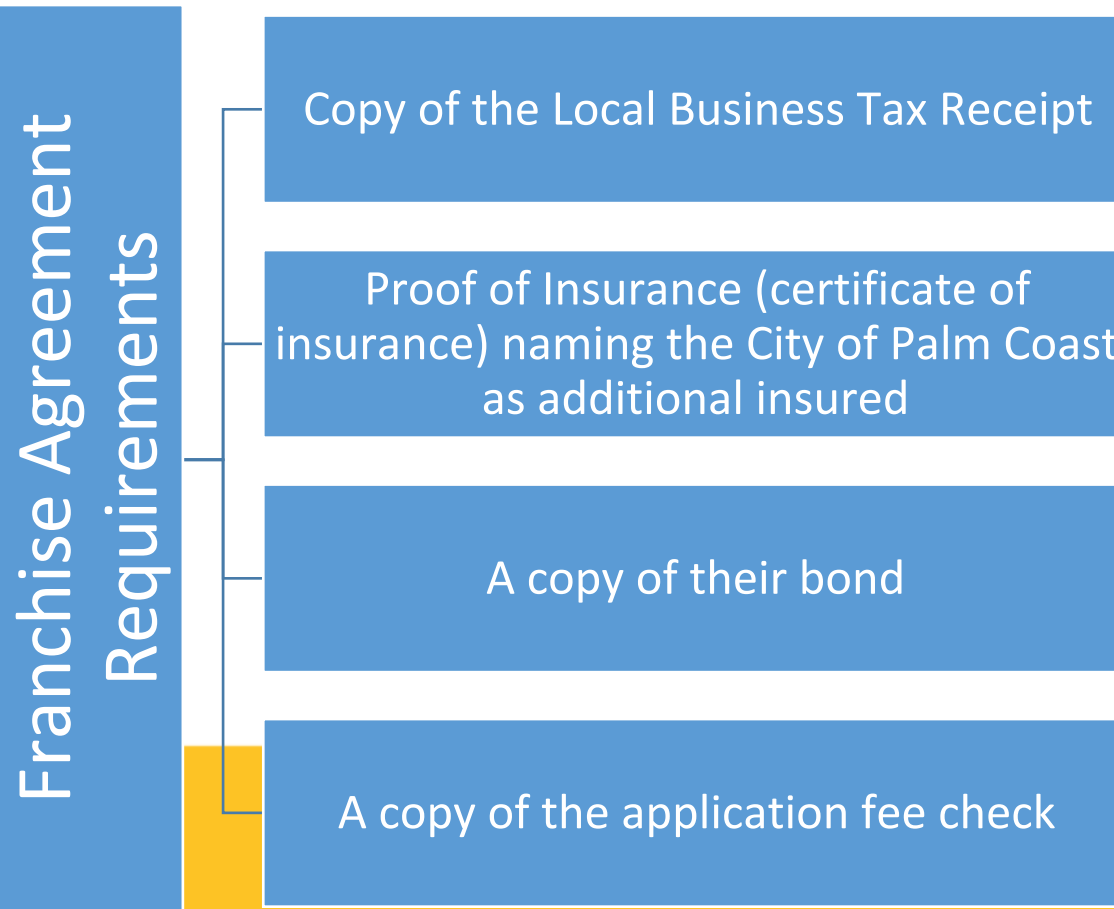
Build and effectively manage sustainable infrastructure that promotes clean water, safe streets, and green infrastructure.

Anticipate the need for additional services and infrastructure. Continue to provide opportunities for development. Maintain visual appeal by caring for our land, water, air, and wildlife.



Current Processes

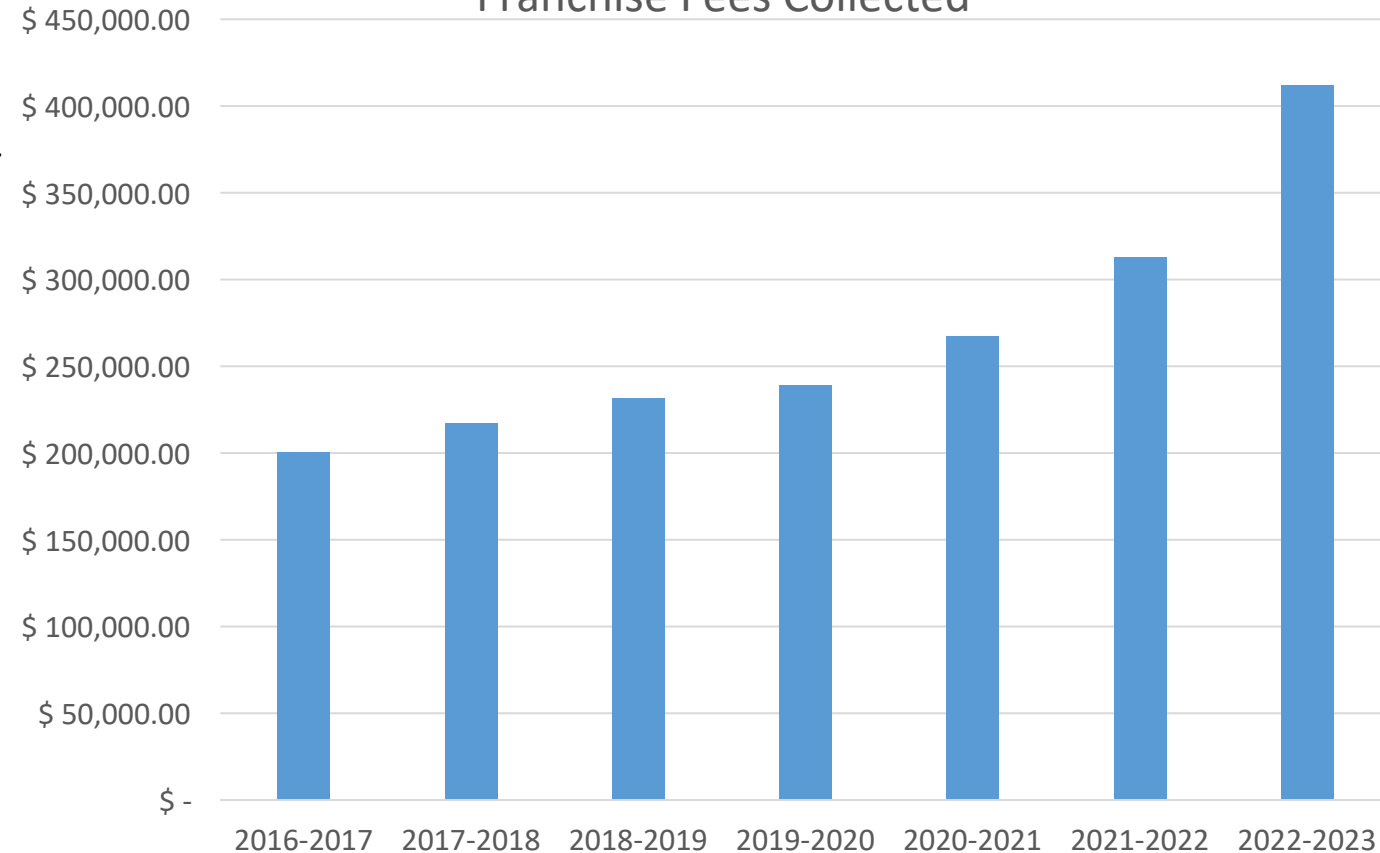
Currently, the City utilizes a Non-Exclusive Franchise Agreement for Commercial Solid Waste Collection. This requires waste haulers to register and as Franchisees through the below process. Each Franchise agreement has a one-year term. Franchisees will receive renewal applications each year approximately two months prior to expiration date of the franchise agreement.



Fees

PAYMENT/FINANCIAL REPORTING

- Annual Application Fee - FRANCHISEE shall pay to CITY an annual application fee as follows:
- Commercial Solid Waste Collection Application Fee - \$2500.00 (Resolution 2008-28), or
- Construction and Demolition Debris Collectors/Haulers Application Fee - \$1000.00 (Resolution 2008-217).
- Monthly Franchise Fee – FRANCHISEE shall pay to CITY a monthly Franchise Fee of 10% of gross revenues billed monthly for commercial solid waste collection (Resolution 2008-28).



Direction to Staff

Continue Non-exclusive Franchise Fee

Seek process improvement efforts continuing forward

Exclusive Franchisee

Consultant

Notices

Bidding process

Oversight of contract

In-house services

Consultant

Notices

Large equipment purchases

Staff (Drivers, Helpers, Supervisors, Mechanics)



City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department	CONSTRUCTION MANAGEMENT & ENGINEERING	Amount	\$1,464,738.73												
Division		Account	#2107400-063000-49013 #2107400-063000-49014												
Subject:	RESOLUTION 2024-XX APPROVING A STATE FIRE MARSHAL GRANT AGREEMENT, ADDITIONAL DESIGN SERVICES, AND DESIGN PHASE EXPENSES FOR THE NEW FIRE STATION 26 AND FIRE STATION 22 REPLACEMENT														
Presenter:	Carl Cote, Director of Stormwater & Engineering														
Attachments:	<ol style="list-style-type: none"> 1. Presentation 2. Resolution 3. Grant Agreement 4. Proposals (2) 														
Background:	<p>Council Priority: C. Safe and Reliable Services: 3. Seek opportunities for the Community Center to help relieve parking Repurpose FS22, to preserve historical value, and expand visitor awareness of Palm Coast.</p> <p>Staff is requesting approval of additional design professional services with Schenkel Schultz Architecture for the replacement of Fire Station #22 in the amount of \$691,391.57 and the new Fire Station #26 in the amount of \$558,347.16, along with approval of design phase expenses of \$215,000 for permits, purchase of wetland impact credits, and additional design and preconstruction services that may be warranted.</p> <p>Staff is also requesting Council approval for the execution of a Grant Agreement with the Florida Department of Financial Services for the state appropriation received by the City in the amount of \$5,000,000.</p>														
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Source of Funds Worksheet FY 24</td> </tr> <tr> <td style="width: 70%;">Fire Impact FS22- 21074000-063000-49013</td> <td style="text-align: right;">\$3,650,000.00</td> </tr> <tr> <td>Total Expenses /Encumbered to date</td> <td style="text-align: right;">\$119,351.60</td> </tr> <tr> <td>Pending Work Orders/Contracts</td> <td style="text-align: right;">\$20,660.00</td> </tr> <tr> <td>Current Contract</td> <td style="text-align: right;">\$798,891.57</td> </tr> <tr> <td>Balance</td> <td style="text-align: right;">\$2,711,096.83</td> </tr> </table>			Source of Funds Worksheet FY 24		Fire Impact FS22- 21074000-063000-49013	\$3,650,000.00	Total Expenses /Encumbered to date	\$119,351.60	Pending Work Orders/Contracts	\$20,660.00	Current Contract	\$798,891.57	Balance	\$2,711,096.83
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Pending Work Orders/Contracts	\$0.00														
Current Contract	\$665,847.16														
Balance	\$2,897,475.44														

ORIGINAL BACKGROUND FROM THE FEBRUARY 14, 2023, WORKSHOP

The projects are part of the 10-year Capital Improvement Plan to address Fire Department Response times and involve, the replacement of an existing station, modifications to an existing station, and the construction of a new facility.

City staff advertised the project (RFSQ-SWE-22-60) and received eight (8) firms that were deemed responsive and responsible. City staff recommends awarding contracts for professional design services in the following amounts to Schenkel Schultz.

- Fire Station 22 - \$150,050
- Fire Station 26 - \$157,030
- Fire Station 25 - \$54,900
-

City staff advertised the project (RFSQ-SWE-22-89) and received four (4) firms that were deemed responsive and responsible. City staff recommends awarding contracts for construction management services, in the amount of \$64,696.82 to Wharton-Smith, Inc.

- Fire Station 22 - \$3,980.18
- Fire Station 26 - \$30,358.32
- Fire Station 25 - \$30,358.32

Staff is also requesting a contingency of \$50,000 to be approved in case of unforeseen circumstances and/or unknown conditions, for a total project cost of \$476,676.82.

Funds for this project have been budgeted for in the Capital Improvement and Fire Impact fee fund for FY 23 Budget.

Recommended Action:

ADOPT RESOLUTION 2024-XX APPROVING A STATE FIRE MARSHAL GRANT AGREEMENT, ADDITIONAL DESIGN SERVICES, AND ADDITIONAL PROJECT CONTINGENCY FOR THE DESIGN OF A NEW FIRE STATION AND FIRE STATION EXPANSION



**City of Palm Coast
Fire Station 22 & 26
Design Update
State Fire Marshal
Grant Agreement**

Replacement Fire Station 22

350 Palm Coast Parkway NE

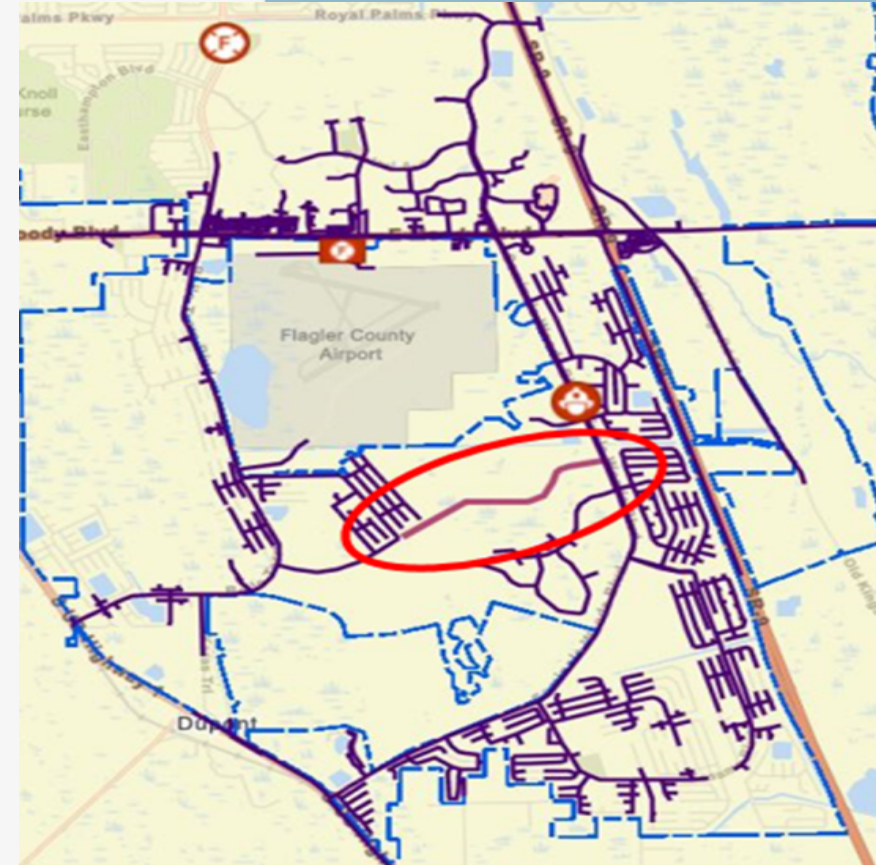
- Located 1/3 of a mile east of current site.
- Functional – Property is 4.44 acres in total but worked with Community Development on environmental concerns
- Strategic – GIS predicative travel analysis and Matrix 2010 Report



New Fire Station 26

3699 Seminole Woods Boulevard

- 1 ¼ miles south of SR 100
- Fire Station Location Study
- Citation Extension eliminates the need for two fire stations south of SR 100
- New Fire Station to serve area south of SR 100 and west of Seminole Woods Blvd.
- Addresses needs of future development in this area



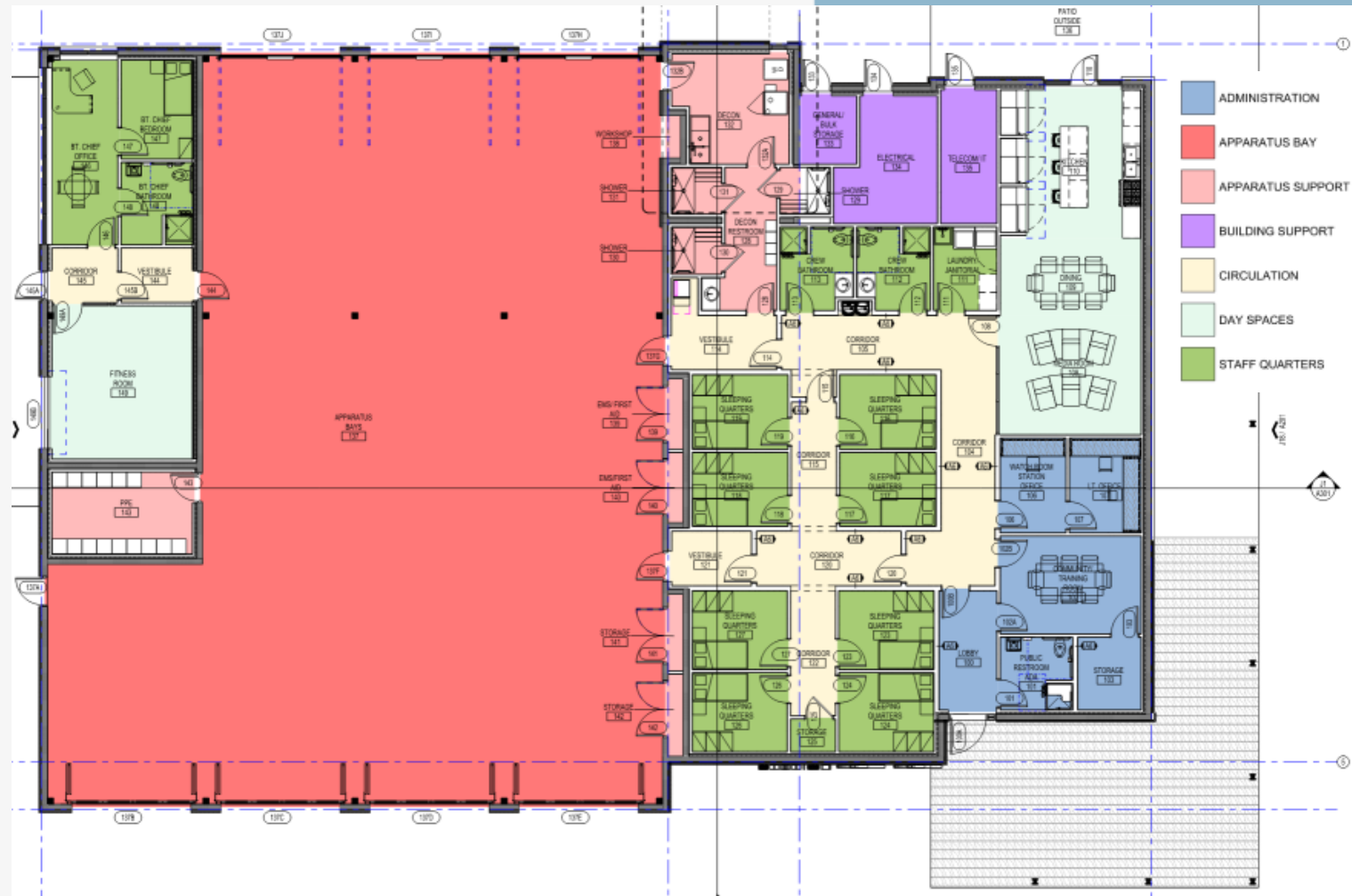
Fire Station Design Exterior

- New Palm Coast Archetype
- Expansive Glazing
- Large Overhangs
- Defined Entry



Fire Station Design Interior

- ~10,000 sf footprint
- Update current prototype to meet current and future needs, health, and safety of Fire Services
- Firefighter Decon
- Rapid Deployment



Fire Station Design and Construction

FS 22 - Design and Construction Funding

Design Phase Budget: \$1,000,000*

- Design / PreConstruction / Construction Administration: \$ 895,000
 - Design Contingency / Permits / Wetland Impacts \$ 105,000
- *(Includes a transfer between FS22 & FS26)*

Construction Phase Budget: \$8,000,000 (ARPA \$3,000,000)

- Conceptual Construction Estimate** \$9,700,000
- ** (includes 10.2% cost escalation and 10% cost contingency)*

Estimated Construction Funding Shortfall \$1,700,000

(American Rescue Plan Act (ARPA) Funds must be obligated by 12/31/2024 and must be fully expended by 12/31/2026)



Fire Station Design and Construction

FS 26 - Design and Construction Funding

Design Phase Budget: \$1,035,000*

- Design / PreConstruction / Construction Administration: \$ 750,000
- Design Contingency / Permits / Wetland Impacts \$ 110,000
- Apparatus: Utility Vehicle \$ 175,000

**(Includes a transfer between FS22 & FS26)*

Construction Phase Budget: \$8,000,000 *(Grant \$5,000,000)*

- Conceptual Construction Estimate** \$9,900,000

*** (includes 10.2% cost escalation and 10% cost contingency)*

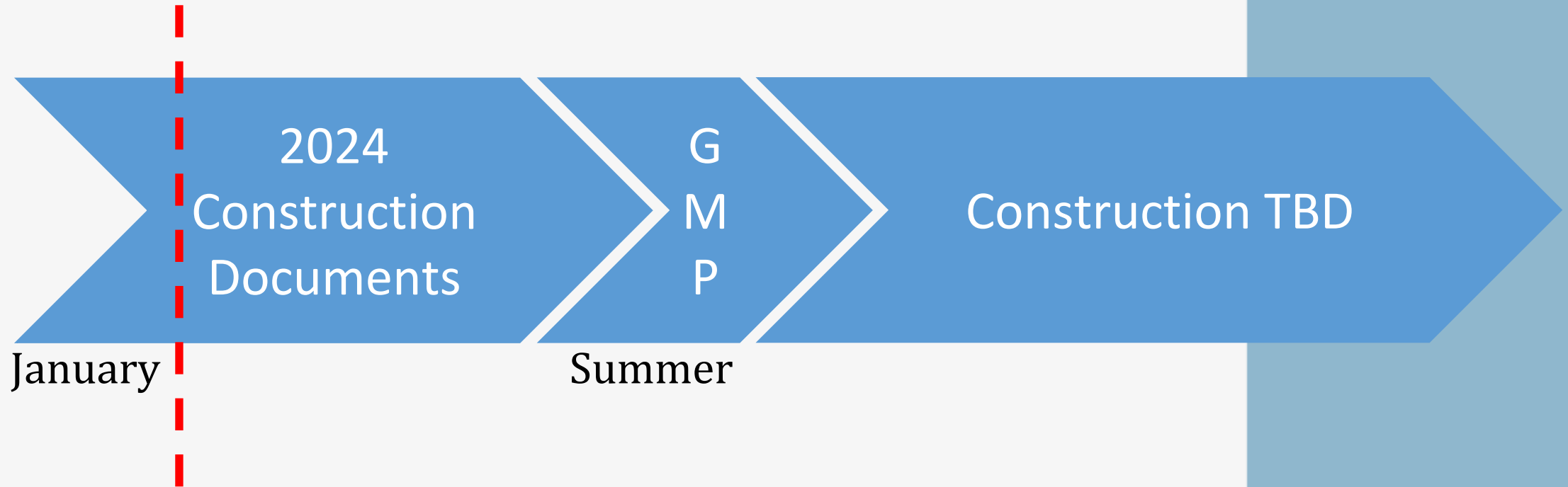
Estimated Construction Funding Shortfall

\$1,900,000

(State Appropriation (Grant) must be executed by 12/31/2024 and must be fully expended by 6/30/2028)



Fire Station Design and Construction Timeline



Fire Station Design and Construction Council Actions

Approval of Schenkel Schultz Architecture - Additional Design Fees

- Fire Station 22 = \$691,391.57
- Fire Station 26 = \$558,347.16

Approval of Design Phase Expenses (FS22 & 26)

- \$215,000 (Contingency / Permits / Wetland Impacts)

Approval of State Fire Marshal Grant Agreement

- \$5,000,000



RESOLUTION 2024-____
FIRE STATION 22 AND 26 ADDITIONAL EXPENSES
AND GRANT AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A STATE FIRE MARSHAL GRANT AGREEMENT, ADDITIONAL DESIGN SERVICES, AND DESIGN PHASE EXPENSES FOR THE NEW FIRE STATION 26 AND FIRE STATION 22 REPLACEMENT; 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, Schenkel & Shultz, Inc., desires to provide additional design and construction phase services for the new Fire Station 26 and Fire Station 22 replacement for the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires for Schenkel & Shultz, Inc., to provide the above-mentioned services for the above-mentioned project; and

WHEREAS, The Florida Department of Financial Services would like to enter into a State Fire Marshal grant agreement for the design and construction of the new Fire Station number 26 and the replacement of Fire Station 22; and

WHEREAS, the City Council of the City of Palm Coast desires to approve the execution of a grant agreement with the Florida Department of Financial Services; 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 findings of the City Council of the City of Palm Coast.

SECTION 2. APPROVAL ADDITIONAL DESIGN PHASE EXPENSES. The City Council of the City of Palm Coast hereby approves additional design services, and design phase expenses for the new Fire Station 26 and Fire Station 22 replacement with Schenkel & Schultz, Inc, attached hereto and incorporated herein by reference as Exhibit “A”. Further, the City Council of the City of Palm Coast approves design phase expenses for contingency, permits, and wetland impact fees in the amount of \$215,000.

SECTION 3. APPROVAL OF GRANT AGREEMENT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the Florida Department of Finance State Fire Marshal Grant Agreement.

SECTION 4. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE. The City Manager, or Designee has the authorization to negotiate, finalize, and execute the necessary documents.

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 Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 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 16th day of January 2024.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

JENNIFER NIX, CITY ATTORNEY

Attachments: Exhibit A - Florida Department of Finance Grant Agreement

**GRANT AGREEMENT
BETWEEN
STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
AND
CITY OF PALM COAST**

THIS GRANT AGREEMENT (Agreement) is made and entered into by and between the Department of Financial Services (Department), an agency of the state of Florida (State), and City of Palm Coast (Grantee), and is effective as of the date last signed. The Department and the Grantee are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, the Department, through its Division of State Fire Marshal (Division), has the authority, pursuant to a specific appropriation of the General Appropriations Act, to grant funds to the Grantee; and

WHEREAS, the Grantee represents that it is fully qualified and eligible to receive these grant funds to perform the tasks identified herein in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, the Department and the Grantee do mutually agree as follows:

A. Tasks and Performance Requirements:

In accordance with Line 2485A of the General Appropriations Act for the 2023-2024 State fiscal year, the Grantee shall perform the tasks specified herein in accordance with the terms and conditions of this Agreement, including its attachments and exhibits, which are incorporated by reference herein.

The funds shall be utilized to design and construct Fire Station 26, and the performance requirements are specifically described in Attachment 1, Scope of Work (herein referred to as the “SOW”).

B. Incorporation of Laws, Rules, Regulations, and Policies:

The Parties shall comply with the applicable state and federal laws, rules, regulations, and policies, including, but not limited to, those identified in this Agreement.

C. Performance Period:

The performance period for this Agreement begins on July 1, 2023, and ends after completion of all deliverables, upon depletion of funding, or upon termination of funding, whichever occurs first, unless terminated earlier in accordance with the terms of this Agreement (Performance Period). No renewals or extensions of the Agreement are permitted.

D. Funding Requirements of Section 215.971(1), Florida Statutes (F.S.):

1. The Grantee may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Performance Period.
2. The Grantee shall refund to the Department any balance of unobligated funds that was advanced or paid to the Grantee.
3. The Grantee shall refund to the Department all funds received in excess of the amount to which the Grantee or its subrecipients are entitled under the terms and conditions of this Agreement.

E. Agreement Payment and Funding Considerations:

1. Compensation. This is a cost reimbursement agreement. This Agreement shall not exceed \$5,000,000.00, and payment shall only be issued by the Department after acceptance of the Grantee's performance as set forth by the terms and conditions of this Agreement. The State's and the Department's performance and obligation to pay under this Agreement after the State fiscal year referenced in Section A, above, is contingent upon the fixed capital outlay funding remaining available for use by the Grantee for the purpose specified herein.
2. Payment Process. Subject to the terms and conditions established in this Agreement and the billing procedures established by the Department, the Department agrees to pay the Grantee in accordance with section 215.422, F.S. The applicable interest rate can be obtained at: <https://www.myfloridacfo.com/division/aa/vendors>.
3. Grantee Rights. A Vendor Ombudsman has been established within the Department. The duties of this individual include acting as an advocate for grantees who may be experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be reached at (850) 413-5516.
4. Taxes. The Department is exempted from the payment of State sales and use tax and Federal Excise Tax. Unless otherwise provided by law, the Grantee, however, shall not be exempted from paying State sales and use tax to the appropriate governmental agencies, nor shall the Grantee be exempted from paying its suppliers for any taxes on materials used to fulfill its contractual obligations under this Agreement. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement. The Grantee shall provide the Department its taxpayer identification number upon request.
5. Expenditures. All expenditures must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the State of Florida Reference Guide for State Expenditures, which can be obtained at: [reference-guide-for-state-expenditures.pdf \(myfloridacfo.com\)](#). The Grantee may not spend funds received under this Agreement for the purposes of lobbying the Florida legislature, the judicial branch, or a State agency.
6. Invoice Detail. Invoices submitted by the Grantee must fulfill all requirements specified in the SOW and include all supporting documentation, when applicable. The Grantee shall also submit invoices in sufficient detail to fulfill all applicable requirements of the State of Florida Reference Guide for State Expenditures. All charges for performance under this Agreement or for reimbursement of expenses authorized by the Department shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
7. Interim Payments. Payments will be made to the Grantee only after the Department's acceptance of the deliverable(s) per the deliverable payment points identified in the SOW; however, if the Department determines that circumstances warrant, the Department may accept partial performance and make partial payment for the partial performance.
8. Advance Payments. If authorized by sections 215.422(15) or 216.181(16), F.S., and approved in writing by the Department, the Grantee may be provided an advance as part of this Agreement.

9. Final Invoice. The Grantee shall submit its final invoice to the Department no later than sixty (60) days after the Agreement ends or is terminated. If the Grantee fails to do so, the Department may, at its sole discretion, refuse to honor any requests submitted after this time period and may consider the Grantee to have forfeited any and all rights to payment under this Agreement.

F. Governing Laws of the State of Florida:

1. Governing Law. The Grantee agrees that this Agreement is entered into in the state of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State. Each Party shall perform its obligations herein in accordance with the terms and conditions of this Agreement. Without limiting the provisions of Section V., Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be in the appropriate State court in Leon County, Florida; in any such action, the Parties waive any right to jury trial.
2. Ethics. The Grantee shall comply with the requirements of sections 11.062 and 216.347, F.S. The Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly:
 - a. offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or
 - b. offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee.

For purposes of subsection b. above, "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. The Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance.

3. Advertising. Subject to chapter 119, F.S., the Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from the Department, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Grantee's name and either a description of the Agreement or the name of the Department or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.
4. Sponsorship. As required by section 286.25, F.S., if the Grantee is a nongovernmental organization that sponsors a program that is financed wholly or in part by State funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Department of Financial Services." If the sponsorship reference is in written material, the words "State of Florida, Department of Financial Services" shall appear in the same size letters or type as the name of the Grantee.
5. Conflict of Interest. This Agreement is subject to chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Grantee or its affiliates.

6. Records Retention. The Grantee shall retain all records made or received in conjunction with the Agreement for the longer of five (5) years after the end of the Performance Period and all pending matters or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>). If the Grantee's record retention requirements terminate prior to the requirements stated herein, the Grantee may meet the Department's record retention requirements for this Agreement by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Grantee shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.
7. MyFloridaMarketPlace. Disbursements under this Agreement are disbursements of State financial assistance to a recipient as defined in the Florida Single Audit Act, section 215.97, F.S., and are exempt from the MyFloridaMarketPlace Transaction Fee pursuant to Rule 60A-1.031(6)(g), F.A.C. Payments will be made according to the SOW and not through the MyFloridaMarketPlace system.

G. Return or Recoupment of Funds:

1. If the Grantee or its independent auditor discovers that an overpayment has been made, the Grantee shall return said overpayment within forty (40) calendar days without prior notification from the Department. In the event that the Department first discovers an overpayment has been made, the Department will notify the Grantee in writing. Should repayment not be made in a timely manner, the Department shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Department's Agreement Manager and made payable to the "Department of Financial Services."
2. Notwithstanding the damages limitations of Section X., Limitation of Liability, if the Grantee's non-compliance with any provision of this Agreement results in additional costs or monetary loss to the Department or the State, the Department can recoup the costs or losses from monies owed to the Grantee under this Agreement or any other agreement between the Grantee and any State entity. In the event that the discovery of additional costs or losses arises when no monies are available under this Agreement or any other agreement between the Grantee and any State entity, the Grantee shall repay such costs or losses to the Department in full within thirty (30) days from the date of discovery or notification, unless the Department agrees, in writing, to an alternative timeframe.

H. Audits and Records:

1. Representatives of the Department, including the State's Chief Financial Officer, the State's Auditor General, and representatives of the federal government, shall have access to any of the Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. The Grantee shall maintain books, records, and documents in accordance with the generally accepted accounting principles to sufficiently and properly reflect all expenditures of funds provided by the Department under this Agreement.
3. The Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance. If the Grantee is required to undergo an audit, the Grantee shall disclose all related party transactions to the auditor.

4. The Grantee shall retain all of its records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance. The Grantee shall cooperate with the Department to facilitate the duplication and transfer of such records or documents upon the Department's request.
5. The Grantee shall include the aforementioned audit and recordkeeping requirements in all approved subrecipient contracts and assignments.

I. Employment Eligibility Verification: N/A

J. Non-Discrimination:

The Grantee shall not unlawfully discriminate against any individual employed in the performance of this Agreement due to race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. The Grantee shall provide a harassment-free workplace, and any allegation of harassment shall be given priority attention and action.

K. Duty of Continuing Disclosure of Legal Proceedings and Instances of Fraud:

1. The Grantee shall provide written notice to the Department disclosing any criminal litigation, investigation, or proceeding that arises during the Performance Period involving the Grantee, or, to the extent the Grantee is aware, any of the Grantee's subrecipients or contractors (or any of the foregoing entities' current officers or directors). The Grantee shall also provide written notice to the Department disclosing any civil litigation, arbitration, or proceeding that arises during the Performance Period, to which the Grantee (or, to the extent the Grantee is aware, any subrecipient or contractor hereunder) is a party, and which:
 - a. might reasonably be expected to adversely affect the viability or financial stability of the Grantee or any subrecipient or contractor hereunder; or
 - b. involves a claim or written allegation of fraud against the Grantee, or any subrecipient or contractor hereunder, by a governmental or public entity arising out of business dealings with governmental or public entities.

All notices under this Section must be provided to the Department within thirty (30) business days following the date that the Grantee first becomes aware of any such litigation, investigation, arbitration, or other proceeding (collectively, a "Proceeding"). Details of settlements that are prevented from disclosure by the terms of the settlement must be annotated as such.

2. This duty of disclosure applies to each officer and director of the Grantee, subrecipients, or contractors when any proceeding relates to the officer's or director's business or financial activities.
3. Instances of Grantee operational fraud or criminal activities, regardless of whether a legal proceeding has been initiated, shall be reported to the Department's Agreement Manager within twenty-four (24) hours of the Grantee being made aware of the incident.
4. The Grantee shall promptly notify the Department's Agreement Manager of any Proceeding relating to or affecting the Grantee's, subrecipient's, or contractor's business. If the existence of such Proceeding causes the State to conclude that the Grantee's ability or willingness to perform the Agreement is jeopardized, the Grantee shall be required to provide the Department's Agreement Manager all reasonable assurances requested by the Department to demonstrate that:
 - a. the Grantee will be able to perform the Agreement in accordance with its terms and conditions; and

- b. the Grantee and/or its employees, agents, subrecipients, or contractor(s) have not and will not engage in conduct in performance under the Agreement that is similar in nature to the conduct alleged in such Proceeding.

L. Assignments, Subgrants, and Contracts:

1. Unless otherwise specified in the SOW or through prior written approval of the Department, the Grantee may not: 1) subgrant any of the funds provided to the Grantee by the Department under this Agreement; 2) contract its duties or responsibilities under this Agreement out to a third party; or 3) assign any of the Grantee's rights or responsibilities hereunder, unless specifically permitted by law to do so. Any such subgrant, contract, or assignment occurring without the prior approval of the Department shall be null and void. In the event the Department approves transfer of the Grantee's obligations, the Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of the Grantee, and of any legal entity that succeeds the Grantee, to the Grantee's obligations to the Department.
2. The Grantee agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If the Department permits the Grantee to contract all or part of the work contemplated under this Agreement, including entering into contracts with vendors for services, it is understood by the Grantee that all such contract arrangements shall be evidenced by a written document containing all provisions necessary to ensure the contractor's compliance with applicable state and federal laws. The Grantee further agrees that the Department shall not be liable to the contractor for any expenses or liabilities incurred under the contract and that the Grantee shall be solely liable to the contractor for all expenses and liabilities incurred under the contract. The Grantee, at its expense, will defend the Department against such claims.
3. The Grantee agrees that the Department may assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity upon giving prior written notice to the Grantee.
4. The Grantee agrees to make payments to any subrecipient or contractor within seven (7) working days after receipt of full or partial payments from the Department, unless otherwise stated in the agreement between the Grantee and the subrecipient or contractor. The Grantee's failure to pay its subrecipients or contractors within seven (7) working days will result in a statutory penalty charged against the Grantee and paid to the subrecipient or contractor in the amount of one-half of one (1) percent of the amount due per day from the expiration date of the period allowed herein for payment. Such statutory penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due (see section 287.0585, F.S.).

M. Nonexpendable Property:

1. For the requirements of this Section of the Agreement, "nonexpendable property" is the same as "property" as defined in section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature).
2. All nonexpendable property purchased under this Agreement shall be listed on the property records of the Grantee. For the purposes of section 273.03, F.S., the Grantee is the custodian of all nonexpendable property, and shall be primarily responsible for the supervision, control, and disposition of the property in his or her custody (but may delegate its use and immediate control to a person under his or her supervision and may require custody receipts). The Grantee must submit an inventory report to the Department with the final expenditure report and inventory annually and maintain accounting records for all nonexpendable property purchased under the Agreement. The records must include information necessary to identify the property, which, at a minimum, must include the following: property tag identification number; description of the item(s); if a group of

items, the number and description of the components; physical location; name, make, or manufacturer; year and/or model; manufacturer's serial number(s); if an automobile, the vehicle identification number and title certificate number; date of acquisition; cost or value at date of acquisition; date last inventoried; and the current condition of the item.

3. At no time shall the Grantee dispose of nonexpendable property purchased under this Agreement without the written permission of, and in accordance with instructions from, the Department. In addition to its plain meaning, "dispose of" includes selling, exchanging, transferring, distributing, gifting, and loaning. If the Grantee proposes to dispose of the nonexpendable property or take any other action that will impact its ownership of the property or modify the use of the property other than for the purposes stated herein, the Department shall have the right, in its sole discretion, to demand that the Grantee reimburse the Department the fair market value of the impacted nonexpendable property.
4. The Grantee is responsible for any loss, damage, or theft of, and any loss, damage, or injury caused by the use of, nonexpendable property purchased with State funds and held in its possession for use in accordance with this Agreement. The Grantee shall immediately notify the Department, in writing, upon discovery of any property loss with the date and reason(s) for the loss.
5. The Grantee shall be responsible for the correct use of all nonexpendable property obtained using funds provided by this Agreement, and for the implementation of adequate maintenance procedures to keep the nonexpendable property in good operating condition.
6. A formal amendment to this Agreement is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget (see SOW).

N. Requirements Applicable to the Purchase of, or Improvements to, Real Property:

If funding provided under this Agreement is used for the purchase of, or improvements to, real property, such funds are contingent upon the Grantee granting to the Department a security interest in the property in the amount of the funding provided by this Agreement for the purchase of, or improvements to, the real property for five (5) years from the date of purchase, the completion of the improvements, or as further required by law (see section 287.05805, F.S.).

O. Insurance:

The Grantee shall, at its sole expense, maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Agreement. Adequate insurance coverage is a material obligation of the Grantee, and the failure to maintain such coverage may void the Agreement. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers authorized to write policies in the State. Specific insurance requirements, if any, are listed in the SOW.

Upon execution of this Agreement, the Grantee shall provide the Department written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Agreement, the Grantee shall furnish the Department proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee.

P. Intellectual Property Rights:

Where activities supported by this Agreement result in the creation of intellectual property rights, the Grantee shall notify the Department, and the Department will determine whether the Grantee will be required to grant the Department a perpetual, irrevocable, royalty-free, nonexclusive license to use, and to authorize others to use for State government purposes, any resulting patented, copyrighted, or trademarked work products developed under this Agreement. The Department will also determine whether the Grantee will be required to pay all or a portion of any royalties resulting from such patents, copyrights, or trademarks.

Q. Independent Contractor Status:

It is mutually understood and agreed to that at all times during the Grantee's performance of its duties and responsibilities under this Agreement that Grantee is acting and performing as an independent contractor. The Department shall neither have nor exercise any control or direction over the methods by which the Grantee shall perform its work and functions other than as provided herein. Nothing in this Agreement is intended to nor shall be deemed to constitute a partnership or joint venture between the Parties.

1. Unless the Grantee is a State agency, the Grantee (and its officers, agents, employees, subrecipients, contractors, or assignees), in performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. Further, unless specifically authorized to do so, the Grantee shall not represent to others that, as the Grantee, it has the authority to bind the Department or the State.
2. Unless the Grantee is a State agency, neither the Grantee nor its officers, agents, employees, subrecipients, contractors, or assignees, are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.
3. The Grantee agrees to take such actions as may be necessary to ensure that each subrecipient or contractor will also be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.
4. Unless agreed to by the Department in the SOW, the Department will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, clerical support, etc.) to the Grantee or its subrecipient, contractor, or assignee.
5. The Department shall not be responsible for withholding taxes with respect to the Grantee's compensation hereunder. The Grantee shall have no claim against the Department for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. The Grantee shall ensure that its employees, subrecipients, contractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State.
6. At all times during the Performance Period, the Grantee must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

R. Electronic Funds Transfer:

The Grantee agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party signed this Agreement. Copies of the authorization form and a sample blank enrollment letter can be found at: <http://www.myfloridacfo.com/Division/AA/Vendors/>.

Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

S. Entire Agreement:

The following documents are attached and incorporated into this Agreement, are considered an integral part of the Agreement, and embody the entire Agreement. This Agreement supersedes all previous oral or written communications, representations, or agreements on this subject. If there are any conflicting provisions between the documents that make up the Agreement, the following order of precedence applies:

- a. Attachment 1, Scope of Work;
- b. Pages 1 through 14 of this Agreement;
- c. Attachment 2, Audit Requirements for Awards of State and Federal Financial Assistance (with its Exhibit 1);
- d. Attachment 3, Index of Applicable Laws and Regulations;
- e. Addendum A, Public Records Requirements (all references in this addendum to “Contractor” shall be read to say “Grantee,” and all references to “Contract” shall be read to say “Agreement”);
- f. Appendix 1, Grantee’s Contract with Construction Manager at Risk Vendor, and any appendices incorporated after execution;
- g. Attachment 4, Status Update Request Form; and
- h. Attachment 5, Reimbursement Request Letter.

T. Time is of the Essence:

Time is of the essence regarding the performance requirements set forth in this Agreement. The Grantee is obligated to timely complete the deliverables under this Agreement and comply with all other deadlines necessary to perform the Agreement, which include, but are not limited to, attendance of meetings or submittal of reports.

U. Termination:

1. Termination Due to the Lack of Funds.
If funds become unavailable for the Agreement’s purpose, such event will not constitute a default by the Department or the State. The Department agrees to notify the Grantee in writing at the earliest possible time if funds are no longer available. In the event that any funding identified by the Grantee as funds to be provided for completion of the project as described herein becomes unavailable, including if any State funds upon which this Agreement depends are withdrawn or redirected, the Department may terminate this Agreement by providing written notice to the Grantee. The Department will be the final authority as to the availability of funds.
2. Termination for Cause.
The Department may terminate the Agreement if the Grantee fails to:
 - a. satisfactorily complete the deliverables within the time specified in the Agreement;
 - b. maintain adequate progress, thus endangering performance of the Agreement;
 - c. honor any term of the Agreement; or
 - d. abide by any statutory, regulatory, or licensing requirement.

The Grantee shall continue to perform any work not terminated. The Department’s rights and remedies in this clause are in addition to any other rights and remedies provided by law or under the Agreement. The Grantee shall not be entitled to recover any cancellation charges or lost profits.

Upon termination, the Department may require that the Grantee return to the Department any funds that were used for purposes that are considered ineligible under:

- a. this Agreement; or
 - b. applicable program laws, rules, and regulations governing the use of funds under this Agreement.
3. Termination for Convenience.
The Department may terminate this Agreement, in whole or in part, by providing written notice to the Grantee that the Department determined, in its sole discretion, it is in the State's interest to do so. The Grantee shall not furnish any product after it receives the Department's notice of termination, except as necessary to complete the continued portion of the Agreement, if any. The Grantee will not be entitled to recover any cancellation charges or lost profits.
4. Grantee's Responsibilities upon Termination.
If the Department provides a notice of termination to the Grantee, except as otherwise specified by the Department in that notice, the Grantee shall:
- a. Stop work under this Agreement on the date and to the extent specified in the notice.
 - b. Complete performance of such part of the work that has not been terminated by the Department, if any.
 - c. Take such action as may be necessary, or as the Department may specify, to protect and preserve any property which is in the possession and custody of the Grantee, and in which the Department has or may acquire an interest.
 - d. Transfer, assign, and make available to the Department all property and materials belonging to the Department upon the effective date of termination of this Agreement. No extra compensation will be paid to the Grantee for its services in connection with such transfer or assignment.

V. Dispute Resolution:

Unless otherwise stated in the SOW, disputes concerning performance under the Agreement will be decided by the Department, who shall reduce the decision to writing and serve a copy to the Grantee. In the event a Party is dissatisfied with the dispute resolution decision, jurisdiction for any dispute arising under the terms of the Agreement will be in State courts, and the venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the Parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

W. Indemnification:

1. The Grantee shall be fully liable for the actions of its agents, employees, partners, subrecipients, or contractors and shall fully indemnify, defend, and hold harmless the State and the Department, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Grantee, its agents, employees, partners, subrecipients, or contractors provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Department.
2. Further, the Grantee shall fully indemnify, defend, and hold harmless the State and the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Grantee's products or the Department's operation or use of the Grantee's products in a manner not contemplated by the Agreement. If any product

is the subject of an infringement suit, or in the Grantee's opinion is likely to become the subject of such a suit, the Grantee may at its sole expense procure for the Department the right to continue using the product or to modify it to become non-infringing. If the Grantee is not reasonably able to modify or otherwise secure the Department the right to continue using the product, the Grantee shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. The Department will not be liable for any royalties.

3. The Grantee's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or the Department giving the Grantee:
 - a. written notice of any action or threatened action;
 - b. the opportunity to take over and settle or defend any such action at the Grantee's sole expense; and
 - c. assistance in defending the action at the Grantee's sole expense.

The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.

NOTE: For the avoidance of doubt, if the Grantee is a State agency or subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability to the other Party for the other Party's negligence.

X. Limitation of Liability:

Unless otherwise specifically enumerated in this Agreement, no Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the Agreement requires the Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and the Department may, in addition to other remedies available to them at law or in equity and upon notice to the Grantee, retain such monies from amounts due the Grantee as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them.

Y. Force Majeure and Notice of Delay from Force Majeure:

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor caused by the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subrecipients, contractors, or suppliers if no alternate source of supply is available. However, in the event a delay arises from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the project in accordance with the Party's performance requirements under this Agreement. In the case of any delay the Grantee believes is excusable under this Section, the Grantee shall provide written notice to the Department describing the delay or potential delay and the cause of the delay within: ten (10) calendar days after the cause that creates or will create the delay first arose (if the Grantee could reasonably foresee that a delay could occur as a result); or five (5) calendar days after the date the Grantee first had reason to believe that a delay could result (if the delay is not reasonably foreseeable). **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this Section is a condition precedent to such remedy. The Department, in its sole discretion, will determine if the delay is excusable under this Section and will notify the Grantee of its decision in writing. The Grantee shall not assert a claim for damages, other than for an extension of time, against the Department. The Grantee will

not be entitled to an increase in the Agreement price or payment of any kind from the Department for any reason. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this Section, after the causes have ceased to exist, the Grantee shall resume performance, unless the Department determines, in its sole discretion, that the delay will significantly impair the ability of the Grantee to timely complete its obligations under this Agreement, in which case, the Department may terminate the Agreement in whole or in part.

Z. Mandatory Disclosure Requirements:

1. Conflict of Interest. This Agreement is subject to chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Grantee or its affiliates.
2. Convicted Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.133(1)(a), F.S., are placed on the convicted vendor list. Pursuant to section 287.133(2)(a), F.S.: “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, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”
3. Discriminatory Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.134(1)(a), F.S., are placed on the discriminatory vendor list. Pursuant to section 287.134(2)(a), F.S.: “An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.”
4. Antitrust Violator Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.137(1)(a), F.S., are placed on the antitrust violator vendor list. Pursuant to section 287.137(2)(a), F.S.: “A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.”
5. Department Inspection of Records. Pursuant to section 216.1366, F.S., the Grantee shall permit the Department to inspect the Grantee’s financial records, papers, and documents that are directly related to the performance of the Agreement or the expenditure of state funds and the Contractor’s programmatic records, papers, and documents which the Department determines are necessary to monitor the performance of the Agreement or to ensure that the terms of the Agreement are being met. The Contractor shall provide such records, papers, and documents to the Department’s Contract Manager within 10 business days after a request is made to the Contractor.
6. Foreign Gifts and Contracts. The Grantee shall comply with any applicable disclosure requirements in section 286.101, F.S. Pursuant to section 286.101(7), F.S.: “In addition to any fine assessed under

[section 286.101(7)(a)], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

AA. Severability:

If any provision of this Agreement, in whole or in part, is held to be void or unenforceable by a court of competent jurisdiction, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions remain in full force and effect.

BB. Survival:

Any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

CC. Execution in Counterparts:

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

DD. Contact Information for Grantee and Department Contacts:

Grantee’s Payee:

Grantee’s Agreement Manager:

Shirley Liu	Mark Tran
160 Lake Ave	160 Lake Ave
Palm Coast, FL 32164	Palm Coast, FL 32164
Telephone: 386-986-4748	Telephone: 386-986-2463
Fax: N/A	Fax: N/A
Email: sliu@palmcoastgov.com	Email: mtran@palmcoastgov.com

Department’s Agreement Manager:

Lauren Tingle
200 E. Gaines St
Tallahassee, FL 32399
Telephone: 850-413-3641
Fax: N/A
Email: Lauren.Tingle@MyFloridaCFO.com

In the event that any of the information provided in this Section changes after the execution of this Agreement, the Party making such change shall provide written notice to the other Party of such change. Such changes do not require a formal amendment to the Agreement.

EE. Notices:

The contact information provided in the immediately preceding Section shall be used by the Parties for all communications under this Agreement. Where the terms “written notice” or notice “in writing” are used to specify a notice requirement herein, said notice will be deemed to have been given:

1. when personally delivered;
2. when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid);
3. the day following the day (except if not a business day, then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or
4. on the date actually received or the date of the certification of receipt.

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this Agreement by their undersigned duly authorized officials.

City Of Palm Coast

Florida Department of Financial Services

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Attachment 1
SCOPE OF WORK (SOW)

- 1. Project Description.** Line 2485A of the General Appropriations Act for the 2023-2024 State fiscal year provides for the appropriation of \$5,000,000.00 to the Grantee for the design and construction of Fire Station 26, hereinafter referred to as the Project, to serve the needs of the local community.

Funding under this Agreement will be used for the design and construction of Fire Station 26, which will be constructed on a city-owned parcel located off Seminole Woods Parkway, of which does not yet have a standardized address. The design and construction of Fire Station 26 will comply with the requirements of the contracts the Grantee has entered with its contractors, which are attached hereto and incorporated by reference herein. The finished Fire Station 26 will consist of a +/- 8,600 sq.ft. building with three (3) vehicle bays, along with living, office, meeting, and training spaces. The total Project cost is estimated to be approximately \$8,000,000.00 with City of Palm Coast contributing approximately \$3,000,000.00 in local funds.

- 2. Grantee Responsibilities.** The Grantee shall:

- a. Complete all pre-construction elements for the Project, which include, but are not limited to: vendor procurement, preliminary design and site preparation.
- b. Submit to the Department, prior to beginning the Project, copies of:
 - i. all ownership documents;
 - ii. all contracts and subcontracts in furtherance of this Agreement; and
 - iii. written evidence that all Project services were competitively procured to the extent required by law.
- c. Complete the Project in accordance with:
 - i. the design and construction plans submitted to the Department;
 - ii. the requirements set forth in this Agreement; and
 - iii. any applicable local, State (including, but not limited to, chapter 255, F.S.), and federal laws and regulations.
- d. Provide the Department with any amendments made to the contracts and subcontracts issued in furtherance of this Agreement. Note: It will be in the Department's sole discretion to determine whether such amendments require a written amendment to this Agreement.
- e. Display signage at the project site that specifies the project intent, fund source, and estimated date of completion. Sign must be in place prior to reimbursement or advancement of funds, should be visible from a public roadway and must remain at project site until project is completed.
- f. Provide the Department with documentation, upon Department's demand, evidencing status reports. Grantee shall provide status report documentation on the Status Update Request Form, incorporated by reference as Attachment 5.

- 3. Department's Responsibilities.**

The Department shall monitor the Grantee's progress as it deems necessary to verify that all requirements of the Agreement are being performed in accordance with this Agreement. The Department shall review submitted documentation and process payments to the Grantee to reimburse allowable, reasonable, and necessary expenditures, not to exceed \$5,000,000.00.

- 4. Deliverables.**

The Grantee shall complete the following deliverable:

Table 1 Deliverable		
Deliverable No. 1 – Finish Design and Construct Fire Station 26.		
Tasks	Documentation	Financial Consequences
Complete all work in accordance with the contract between the Grantee and the contractor performing the work, which is attached as Appendix 1.	<ol style="list-style-type: none"> 1) Invoice in accordance with Section 6, below. 2) The Grantee shall submit copies of: <ol style="list-style-type: none"> a. Any documents demonstrating satisfactory performance in completion of the tasks listed in the contract which is attached as Appendix 1; b. Proof of release of any liens that are associated with the work for which payment is requested; documentation to support performance by and payments made by contractor to subcontractors and suppliers for satisfaction of contractor’s obligations under its contract with the Grantee; and c. Cleared checks, electronic funds transfers, or bank statements showing that payment was issued to the Grantee’s contractor. 	<p>Failure to pass each required construction phase inspection will result in non-payment of the associated invoiced task(s) until passage of the construction phase inspection.</p> <p>The Department will not reimburse the Grantee the amount of fees assessed for any re-inspection.</p>
TOTAL REIMBURSABLE AMOUNT NOT TO EXCEED \$5,000,000.00		

5. Reconciliation Report.

Pursuant to section 215.971, F.S., the Department’s Agreement Manager must produce a final reconciliation report reconciling all funds paid out to the Grantee under this Agreement against all funds

expended by the Grantee in performance of this Agreement. If the Department's Agreement Manager requests documentation from the Grantee's Agreement Manager for this purpose, Grantee must submit such documentation to the Department within ten (10) business days of receipt of the Department's request.

6. Invoice Submittal and Payment Schedule.

The Grantee shall provide itemized invoices for all portions of the deliverable rendered during that period. After receipt of the invoice, and in accordance with the payment provisions established in Section E., Agreement Payment and Funding Considerations, of the Agreement, the Department shall disburse the amount of funds approved by the Department.

To request reimbursement, the Grantee shall:

- a. Complete the Reimbursement Request Letter, incorporated by reference as Attachment 4, signed by the Grantee's Agreement Manager certifying that the costs being claimed in the invoice package:
 - i. Are specifically for the project represented to the State in the budget appropriation;
 - ii. Have been paid;
 - iii. Were incurred within the Performance Period as specified in Section C, Performance Period, of the Agreement; and
 - iv. Are not a duplicate, and duplicates will not be submitted to another funding source.
- b. All documentation (specified in Section 4, Deliverables) necessary to demonstrate that progress on the project has been made and the work being invoiced has been completed in accordance with the requirements of this Agreement.

The Department may require any other information from the Grantee that the Department deems necessary to verify performance in accordance with this Agreement.

7. Financial Consequences for Failure to Timely and Satisfactorily Perform.

Failure to complete the required duties outlined in the SOW shall result in the rejection of the invoice and as stated above in Section 4, Deliverables, if re-inspection is invoiced, the Department will reduce the invoice by that amount.

This provision for financial consequences shall not affect the Department's right to terminate the Agreement as provided elsewhere in the Agreement.

8. Disposition of Property.

- a. Pursuant to Section M, Nonexpendable Property, of this Agreement, upon satisfactory completion of the requirements of the Agreement, the Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, the Grantee hereby grants to the Department a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by the Grantee, but not to exceed five (5) years following the termination of the Agreement. The Grantee shall provide written notice of any such planned disposition and await the Department's response prior to disposing the property. "Disposition" as used herein, includes, but is not limited to, the Grantee no longer using the nonexpendable property for the uses authorized herein; and the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. The Department, in its sole discretion, may require the Grantee to refund to the Department the fair market value of the

nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property.

- b. Upon satisfactory completion of the requirements of this Agreement, the Grantee is authorized to retain ownership of the real property improved under this Agreement; however, for five (5) years thereafter the Grantee must provide written notice to the Department of any circumstance that:
 - i. will impact or has impacted, in any way, the Grantee's ownership of such property; or
 - ii. will modify or has modified the use of such property from the purposes authorized herein.

Such notice must be provided within ten (10) business days of learning of the event that will result or has resulted in either circumstance. If either of these circumstances arise, the Department will have the right, within its sole discretion, to demand that the Grantee reimburse the Department for part or all of the funding provided to the Grantee under this Agreement.

9. Failure to Complete Project Timely.

Upon completion of the project, the Grantee shall submit to the Department a copy of the Certificate of Occupancy and photos of the completed project. The Department will have the right, in its sole discretion, to demand that the Grantee reimburse the Department for part or all of the funding provided to the Grantee under this Agreement if: 1) the Grantee fails to obtain the required construction permit(s) within three (3) years after the documentation listed in section 2. for Deliverable No. 2 has been created; or 2) the construction permit expires before the certificate of occupancy has been issued.

- End of Attachment 1 (Scope of Work) -

ATTACHMENT 2

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

The administration of resources awarded by the Department of Financial Services (Department) to the Grantee may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the Grantee agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Grantee is appropriate, the Grantee agrees to comply with any additional instructions provided by Department staff to the Grantee regarding such audit. The Grantee further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

Part I: Federally Funded

This part is applicable if the Grantee is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A grantee that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through the Department by this agreement. In determining the federal awards expended in its fiscal year, the Grantee shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Grantee conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Grantee shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A grantee that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Grantee expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Grantee resources obtained from other than federal entities).

Part II: State Funded

1. In the event that the Grantee expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Grantee (for fiscal years ending June 30, 2017, or thereafter), the Grantee must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the Grantee shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.

2. For the audit requirements addressed in Part II, paragraph 1, the Grantee shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the Grantee expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, or thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Grantee expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Grantee's resources obtained from other than state entities).

Part III: Other Audit Requirements

N/A

Part IV: Report Submission

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Grantee directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Grantee directly to each of the following:

- a. The Department at each of the following addresses:

Electronic copies (preferred): SFMGrant@myfloridacfo.com

or

Paper (hard copy):

Lauren Tingle

Department of Financial Services

200 East Gaines Street

Tallahassee, Florida 32399-0340

- b. The Auditor General's Office at the following address:

Auditor General

Local Government Audits/342

Claude Pepper Building, Room 401

111 West Madison Street

Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

3. Any reports, management letters, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Grantees, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Grantee in correspondence accompanying the reporting package.

Part V: Record Retention

The Grantee shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO, or Auditor General access to such records upon request. The Grantee shall ensure that audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

EXHIBIT 1

**Federal Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

1. Federal Program A:

N/A

2. Federal Program B:

N/A

**Compliance Requirements Applicable to the Federal Resources
Awarded Pursuant to this Agreement are as Follows:**

1. Federal Program A:

N/A

2. Federal Program B:

N/A

**State Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

Matching Resources for Federal Programs:

1. Federal Program A:

N/A

2. Federal Program B:

N/A

Subject to Section 215.97, F.S.:

1. State Project A:

State Project: Local Government Fire Service Grants

State Awarding Agency: State of Florida, Department of Financial Services

Catalog of State Financial Assistance Title and Number: Local Government Fire Service Grants,
43.009

Amount: \$5,000,000.00

2. State Project B:

N/A

**Compliance Requirements Applicable to State Resources Awarded
Pursuant to this Agreement Are as Follows:**

The compliance requirements are as stated in Grant Agreement #FM825 between the Grantee and the Department, entered in State Fiscal Year 2023-2024.

Attachment 3
Index of Applicable Laws and Regulations

1. Statutory Requirements:

Chapter 112, F.S. (conflict of interest)
Chapter 119, F.S. (public records and exceptions to disclosure)
Sections 11.062 and 216.347, F.S. (prohibitions on the use of state funds for lobbying purposes)
Section 216.1366, F.S. (inspection of records)
Section 286.101, F.S. (foreign gifts and contracts)
Section 286.25, F.S. (sponsorship)
Section 287.133, F.S. (convicted vendor list)
Section 287.134, F.S. (discriminatory vendor list)
Section 287.137, F.S. (antitrust violator vendor list)
Americans with Disabilities Act
Immigration and Nationality Act

2. Audit Requirements:

Section 20.055, F.S. (audit investigations)
Section 215.34, F.S. (return or recoupment of funds)
Section 215.97, F.S., Florida Single Audit Act
Section 215.971, F.S., Agreements Funded with Federal or State Assistance

3. Financial Requirements:

Section 215.422, F.S. (payments from state funds)
Section 273.02, F.S. (nonexpendable tangible personal property)
Section 287.05805, F.S. (if funding is used for real property purchase or improvement)
Section 287.0585, F.S. (payments to subcontractors)
Rule 60A-1.031, F.A.C. (MyFloridaMarketPlace)
Chief Financial Officer Memoranda Nos. 1, 2, and 4 (effective July 1, 2020)

Appendix 1

Grantee's Contract with Construction Manager at Risk Vendor

BPO Mgr. approved

DS
MR



CONTRACT EXECUTIVE OVERVIEW

Vendor Name Wharton-Smith, Inc.

Project Name: Construction Management Services for Palm Coast Fire Station No.26

Bid/Reference # RFSQ-SWE-22-89

Contract Type: AIA A133-2009 Standard Form of Agreement and General Conditions

Contract Value \$ 30,358.32

Resolution # 2023-25

City Council Approval Date: 2/21/2023

Standard Contract Template (Y/N): no

If No, then Reviewed by City Attorney: yes

Length of Contract: Until Complete

Renewable (Y/N): No

If Yes, # and length of renewals: n/a

City's Project Manager Eric Gebo

Brief Description/Purpose:

AIA Contract for the construction management services for Palm Coast Fire Station No. 26

Approvals:

Responsible Dept. Director Carl Cote

Date: May 8, 2023 | 5:33 AM PDT

City Finance Helena Alves

Date: May 8, 2023 | 9:07 AM EDT

City Attorney Mysa Borkert

Date: May 4, 2023 | 1:11 PM EDT

City Manager Denise Bevan

Date: May 8, 2023 | 4:27 PM EDT



city of PALM COAST

Finance Department
Budget & Procurement Office

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

Dear Supplier,

Please review and sign the attached agreement via DocuSign.

In addition, please attach proof of insurance which is compliant with the insurance requirements set forth in the Agreement.

Thank you.



Regards,
City of Palm Coast

Budget & Procurement Office





AIA Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the **8th** day of **May** in the year 2023
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Palm Coast
160 Lake Ave.
Palm Coast, FL 32164

and the Construction Manager:

Wharton-Smith, Inc.
750 Monroe Road
Sanford, Florida 32771

for the following Project:
Fire Station 26
Seminole Woods Boulevard
Palm Coast, Florida 32164

The Architect:
Schenkel & Shultz Inc
200 E. Robinson St Suite
300
Orlando Florida 32801

The Owner's Designated Representative:

Carl Cote, Director of Stormwater & Engineering
160 Lake Ave.
Palm Coast, FL 32164

The Construction Manager's Designated Representative:

Darin A. Crafton
Chief Operating Officer - Commercial Division
Sanford, Florida 32771

The Architect's Designated Representative:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

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TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS**§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 1.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for coordinating the activities of construction during the Construction Phase, shall be fully responsible for discharging all of the

Construction Manager's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team, consisting of the Construction Manager, the Owner and the Architect, and all consultants and Subcontractors of any tier employed or retained by each of them, to make recommendations for alternate or substitute technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner every two weeks during Schematic Design and Design Development phases and weekly during the construction Document phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, value engineering and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Construction Schedule and shall control the logic, method and sequencing of all construction activities.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 The Construction Manager will collaborate with the Architect and Owner on cost estimates throughout the Preconstruction Phase. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing

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detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings to endeavor to achieve savings equal to or greater than the overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.7.1 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work for approval by the Owner, which approval shall not be unreasonably withheld. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. The Construction Manager shall review upon receipt the Drawings and Specifications submitted to it; however, the Construction Manager shall not be liable for errors, omission and issues with such design documents. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and may recommend changes and alternatives for the Architect's consideration. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 The Construction Manager shall also provide the following preconstruction services:

- .1 The Construction Manager will submit for approval by the Architect and the City's Representatives applicable cost, sustainability, energy and time savings programs.
- .2 The Construction Manager will provide life cycle cost estimating for effective evaluation of options.
- .3 The Construction Manager will review design/construction documents to ensure constructability and identify any defects or ambiguities and submitting recommended alternatives.
- .4 The Construction Manager will review construction documents to minimize errors and omissions.
- .5 The Construction Manager will coordinate with the Architect to finalize the construction documents.
- .6 The Construction Manager will review the current budget issues and guarantee a maximum price based on the ninety percent (100%) complete Construction Documents and successful negotiations with the City. The Guaranteed Maximum Price will include the Construction Manager fees for his construction services.

- .7 The Construction Manager will establish the master project schedule identifying all different phases and all milestone items. Provide all projects scheduling as defined above, including the Development of a CPM type master schedule for all significant activities during the pre-construction period. Also, prepare a CPM type master construction schedule for inclusion in the construction contract documents. Assist the City and the design consultant in determining the feasibility of issuing of early bid packages.
- .8 The Construction Manager will solicit responsible Subcontractors and Suppliers interested in bidding on the project.
- .9 The Construction Manager will provide all permitting applications and requirements as needed.
- .10 The CM will coordinate with the Owner and the Architect to discuss green materials and LEED specifications review, to include requirements for construction waste management plans, construction IAQ management plans, commissioning requirements, and LEED requirements for materials sources and manufacturer's data.
- .11 The Construction Manager will schedule and conduct pre-bid conferences with the interested subcontractors, material suppliers, and equipment suppliers.
- .12 The Construction Manager will identify different bid packages that will represent the entire scope of work.
- .13 The Construction Manager will accept, review, and award bids to qualified subcontractors, based on the bid packages identified.
- .14 The Construction Manager will contract with all subcontractors, material suppliers, and equipment suppliers necessary for the proposed construction work.
- .15 The Construction Manager will coordinate with the Architect and/or City's Representative to schedule and conduct pre-construction meetings with subcontractors.
- .16 The Construction Manager will set procedures for cost and time control updates and Develop and maintain systems for reporting and retrieval of project information.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. At the 100% completion of the construction documents the Architect, Owner and Construction Manager will meet and mutually establish the scope, timing and construction schedule. The City may delay the request for the preparation of the GMP up to 1-year after the completion of the 100% complete construction documents without incurring any additional fees from the Construction Manager.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

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§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Savings shall accrue and be available for use in the same manner as the Construction Manager's contingency, but accrual of Savings into contingency shall not increase the Guaranteed Maximum Price. The Construction Manager shall have full use of the Construction Manager's Contingency to pay for any items which are within the definition of the Cost of the Work as set forth in this Agreement. In the event the Construction Manager intends to use the Construction Manager's Contingency for an item which has a cost in excess of Five Thousand Dollars (\$5,000), then for such item the Construction Manager will first seek the Owner's consent which consent shall not be unreasonably withheld by Owner. This Contingency is not available for Owner directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 2.2.2. The Construction Manager shall provide the Owner with monthly reports which identifies the use, amount and balance of the Construction Manager's Contingency.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and the Owner. For each subcontract bid, Construction Manager will provide Owner with an opportunity to have removed any bidder from Construction Manager's proposed list of bidders. The Construction Manager shall be solely responsible for the acceptance, review, and award of bids to qualified responsive and responsible Subcontractors. Nothing contained in this Agreement or in any contract document does or shall create any contractual relationship between the

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Owner and any Subcontractor. Owner and Construction Manager understand, acknowledge and agree that Construction Manager is not acting as an agent for the Owner with respect to any Subcontractor or in the procurement of subcontracts, and the procurement of subcontracts will not otherwise be considered as part of a public procurement process. Owner shall not be responsible for Subcontractor performance.

§ 2.3.2.2 NOT USED

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager intends to award a subcontract to a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship prior to award and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007 and other Contract Documents. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information on the log does not constitute notice of a potential or actual Claim to the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager will be required to participate in City of Palm Coast's "City's Direct Purchase Program", communicating and cooperating with staff and any additional contractors that the City may choose to employ.

§ 2.3.2.10 The Construction Manager shall obtain the necessary entitlements related to construction, such as building permits.

§ 2.3.2.11 The Construction Manager will coordinate surveyors, special consultants, and testing lab services contracted by the City as required.

§ 2.3.2.12 The Construction Manager will coordinate site construction management services including, but not limited to:

- .1 Regular weekly job site meetings
- .2 Maintain daily onsite project log and schedule report which shall include verification of background badge check

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192

- .3 Oversee quality assurance testing and inspection programs. Review testing, inspection, and commissioning reports. Resolve deficient work with subcontractor.
- .4 Monitor construction management staff and subcontractor work performance for deficiencies
- .5 Maintain record copy of all contract documents, change order, and other documentation on site
- .6 Institute and administer procedures for processing shop drawings and sample submittals in an efficient and timely manner. Review all shop drawings and submittals and take appropriate action prior to forwarding to the Design Professional. Oversee construction management staff and subcontractor safety programs.
- .7 Staff this project in a satisfactory manner.
- .8 Update and maintain master project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules.
- .9 Prepare a schedule of values associated with each bid package identified and submit for approval by the Architect and/or City's Representative. All payment requests must be in accordance with the approved schedule of values.
- .10 Process payment requests for approval by the Architect and/or the City's Representative.
- .11 Process any change orders for approval by the Architect and/or the City's Representative including a detailed cost estimate of the proposed change.
- .12 Process Requests for Information (RFI) and coordinate with the Architect and/or City.
- .13 Provide construction program accounting and reporting to the City on a monthly basis and as requested.
- .14 Monitor for the presence of asbestos containing building materials and assure the City that no asbestos containing material has been used.
- .15 Coordinate with the Architect and/or City the final inspection prior to the Architect's and/or City's approval and issuance of the Certificate of Substantial Completion and the Certificate of occupancy.

§ 2.3.2.13 The Construction Manager will coordinate with the Owner and the Architect to conduct the LEED CM Kick Off Meeting to review CM and major sub-contracting documentation responsibilities and LEED documentation requirements during the construction phase.

§ 2.3.2.14 The Construction Manager will coordinate project closeout, start-up, field training, and transition to operation.

§ 2.3.2.15 The Construction Manager will coordinate with the Architect to provide a complete project record including providing final project manual and reproducible drawings corrected to show all construction changes, additions, and deletions compared to the construction documents and shall deliver all such documents to Owner at the completion of the Project.

§ 2.3.2.16 The Construction Manager will coordinate with the Architect and/or City to prepare and submit for approval by the City the Final Certificate of Completion.

§ 2.3.2.17 The Construction Manager will obtain and review for completeness, have corrected if necessary, and submit to the City following the Architect's approval all warranties, operations and maintenance manuals, and other such documents.

§ 2.3.2.18 The Construction Manager will coordinate and conduct the one (1) year and (2) year Building Warranty Inspections.

§ 2.3.2.19 The Construction Manager will assist in the final preparation and submission of the construction phase LEED documentation requirements to the USGBC.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES**§ 3.1 Information and Services Required of the Owner**

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents (and Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*) require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested and upon its approval, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.1.5 The Owner shall only communicate with Subcontractors through the Construction Manager.

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§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to public construction in the jurisdiction of the Project.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**§ 4.1 Compensation**

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Construction Manager shall be paid a lump sum fee of \$30,358.32 (thirty thousand three hundred and fifty-eight dollars and thirty-two cents) for preconstruction services. Payments shall be made in equal monthly payments during the design phase based upon the master project schedule.

At the 100% completion of the construction documents the Architect, Owner and Construction Manager will meet and mutually establish the scope, timing and construction schedule. The City may delay the request for the preparation of the GMP up to 1-year after the completion of the 100% complete construction documents without incurring any additional fees from the Construction Manager.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payment by the Owner to the Construction Manager shall be made in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 Et Seq., and shall be made by wire transfer to the Construction Manager's bank account. The Construction Manager shall provide to the Owner the appropriate bank routing and account information necessary to accomplish wire transfers.

The Parties agree to comply with the Local Government Prompt Payment Act, Florida Statute Section 218.70.
(Insert rate of monthly or annual interest agreed upon.)

Prime plus one percent

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

Five percent (5%) of the estimated Cost of the Work plus the Construction Manager’s Contingency, which shall be converted to a Lump Sum when the Guaranteed Maximum Price is mutually agreed upon as provided herein. The Fee shall be paid in accordance with Section 7.1.7.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

The Construction Manager’s Fee shall be increased on account of Changes in the Work by an amount equal to seven percent (7%) of the Cost of the Change determined in accordance with Subparagraph 7.3.3.3 of the General Conditions.

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

Subcontractors and sub-subcontractors shall be limited to no more than fifteen percent (15%) for overhead and profit combined for work performed by their own forces. Subcontractors shall be limited to ten percent (10%) for overhead and profit combined for work performed by sub-subcontractors.

§ 5.1.4 Rental rates for major Construction Manager-owned equipment shall not exceed one hundred fifty percent (150%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)	Init. ^{DS} _{CC}
			by Change Order

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

If, upon completion of the Project, the Actual Cost of the Work plus the Construction Manager’s Fee is less than the Guaranteed Maximum Price, as set forth herein and as adjusted by Change Orders, the Owner shall pay the Construction Manager an amount equal to twenty percent (20%) of such savings as additional compensation.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents. The Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Price consistent with the requirements of the Contract Documents as a result of changes in the Work.

and an equitable adjustment in Contract Price consistent with the change in work, negotiated by both parties and agreed to in writing. Init. ^{DS} _{CC}

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§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts and the Contract Documents.

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost where approval shall not be unreasonably withheld. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval times a multiplier of 1.65 to compensate the Construction Manager for the items enumerated in Clause 6.2.4 below. Wages or salaries of the Construction Manager’s home office personnel performing the functions of Construction Supervisor (including Project Executive), Estimating, Scheduling, Purchasing, Accounting, Cost Control, Legal and Safety times a multiplier of 1.65 to compensate the Construction Manager for the items enumerated in Clause 6.2.4 below and the associated office overhead.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work times the appropriate multiplier referenced in Clause 6.2.2 above.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, the Construction Manager’s standard fringe benefits such as sick leave, medical and health benefits, holidays, vacations, allowed absences and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and

assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

- .1 Cost of Trade Contractor default protection that the Construction Manager is required to procure by this Agreement or is deemed necessary by the Construction Manager (inclusive of the charge for Trade Contractor Default Insurance at the rate of \$13.00 per \$1,000 of subcontracted volume or the cost of premiums for obtaining payment and performance bonds from the Trade Contractors in lieu of Trade Contractor Default Insurance.)

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of the Construction Manager's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager's Risk Management Liability Insurance shall be invoiced at the rate of \$9.97 per \$1,000 of Contract revenue.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

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§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval. Cost of jobsite computer hardware, software, supplies and communications, cost of Corporate and regional data processing/MIS services billable at the rate of \$5.23 per labor hour expended for the Project.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between or including the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.6.10 NOT USED

§ 6.6.11 The Construction Manager shall also be compensated for costs, including any administrative costs, for compliance with any public records requests, including public record requests pursuant to FS 119.0701. Such costs incurred after project closeout shall not be subject to the Guaranteed Maximum Price, and shall be reimbursed by the Owner within 30 days of Construction Manager invoicing the Owner for such costs. The Parties agree to comply with the following public records law;

In accordance with section 119.0701, Florida Statutes, Construction Manager agrees that all documents, transactions, writings, papers, letters, tapes, photographs, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to this Agreement or in connection with any funds provided by the Owner pursuant to this Agreement may be considered public records pursuant to Chapter 119, Florida Statutes. Construction Manager agrees to keep and maintain any and all public records that ordinarily and necessarily would be required by the Owner in order to perform the services required by this Agreement. Construction Manager also agrees to provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law. Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. In addition, Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of the Construction Manager upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner. If Construction Manager does not comply with a public records request, the Owner shall have the right to enforce the provisions of this Paragraph. In the event that Construction Manager fails to comply with the provisions of this Paragraph, and the Owner is required to enforce the provisions of this Paragraph, or the Owner suffers a third party award of attorney's fees and/or damages for violating the provisions of Chapter 119, Florida Statutes due to Contractor's failure to comply

with the provisions of this Paragraph, the Owner shall be entitled to collect from Construction Manager prevailing party attorney's fees and costs, and any damages incurred by the Owner, for enforcing this Paragraph against Contractor. And, if applicable, the Owner shall also be entitled to reimbursement of any and all attorney's fees and damages which the Owner was required to pay a third party because of Contractor's failure to comply with the provisions of this Paragraph. This Paragraph shall survive the termination of this Agreement.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are specifically excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase. save ^{DS} Int. ^{DS} except as provided by Article 4.1 herein
- .9 NOT USED
- .10 Data Processing, software, hardware or computer-related costs in excess of the rate set forth in Section 6.6.6.
- .11 Penalties and fines imposed by a government entity to the extent caused by the negligence, fault or breach by Construction Manager, Subcontractor of any tier, or anyone who Construction Manager shall be legally responsible.
- .12 Liquidated Damages
- .13 Legal, consultant, or claims[-related expenses except as specifically provided in Sections 6.6.8 or 6.6.11.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law. The audit rights of the Owner shall not extend to lump sums or negotiated rates.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 *Et Seq.*

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Payment by the Owner to the Construction Manager shall be made in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 *Et Seq.*, and shall be made by wire transfer to the Construction Manager's bank account. The Construction Manager shall provide to the Owner the appropriate bank routing and account information necessary to accomplish wire transfers.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee

shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of N/A (N/A) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007. five percent (5%) Init. DS
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§ 7.1.8 Payments to Subcontractors shall be subject to retainage of ~~ten percent (10%)~~. Upon fifty percent (50%) completion of a Subcontractor's work, no further retainage will be withheld provided the Subcontractor is performing satisfactorily in the Owner's and Construction Manager's opinions. The Construction Manager's fee and General Conditions costs shall not be subject to retainage.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 *Et Seq.*, when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for convenience as described in Section 14.1.1 of AIA Document A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will

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terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 It is expressly understood that the Owner shall be directly retaining the services of an Architect/Engineer.

§ 11.5.2 Notwithstanding anything contained herein, it is expressly understood that the Construction Manager's Project Control Systems, including without limitation - estimating, scheduling, purchasing, cost reporting and project engineering systems, and all modifications, additions, or alterations thereto, are and shall remain the sole property of the Construction Manager.

§ 11.5.3 NOT USED

§ 11.5.4 Notwithstanding the event of any claim, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Construction Manager shall carry on the Work and the Owner shall continue to make payments in accordance with this Agreement.

§ 11.5.5 NOT USED

§ 11.5.6 Environmental Limitation of Liability: The Construction Manager shall not be liable for environmental matters on, under or about the premises which constitute the Project, including without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, the development or growth of mold within or on any structures, air quality levels, and to the generation, use, storage, transportation or illegal disposal of solid wastes, hazardous materials, special wastes or other contaminants, unless such environmental claims are the result of the negligence of the Construction Manager or its failure to comply with the requirements of the Contract Documents. This disclaimer of liability shall apply to all such claims against the Construction Manager, whether direct or indirect, including without limitation, third party claims for which the Owner is seeking indemnification from the Construction Manager unless such claims are the result of the negligence of the Construction Manager or its failure to comply with the requirements of the Contract Documents.

§ 11.5.7 Pursuant to Section 558.0035, Florida Statutes, an individual employee or agent of the Construction Manager may not be held individually liable for economic damages or damages resulting from

ARTICLE 12 SCOPE OF THE AGREEMENT

negligence under this Agreement if the conditions of Section 558.0035 are satisfied. Init. DS

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified.
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the day and year first written above.

DocuSigned by:
Denise Bevan
B8F859DE5A4147C...

DocuSigned by:
Darin A. Crafton
CONSTRUCTION MANAGER (Signature)

Denise Bevan, City Manager
(Printed name and title)

Darin A. Crafton Chief Operating Officer
(Printed name and title)

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AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Fire Station 26

Located on a 27.2 acre site on

Seminole Woods Blvd.

THE OWNER:

(Name and address)

City of Palm Coast

160 Lake Ave.

Palm Coast, FL 32164

THE ARCHITECT:

(Name and address)

Schenkel & Shultz, Inc.

200 E. Robinson St.

Suite 300

Orlando, FL 32801

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

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207
(1365592391)

INDEX

(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3****Access to Work****3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.4.2, 13.7.1, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5****Administration of the Contract**3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

Arbitration8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4****ARCHITECT****4****Architect**, Definition of**4.1.1**

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4,

9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1,

12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,

4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2,

9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1,

7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1,

3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,

4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work**5.2****Basic Definitions****1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

Boiler and Machinery Insurance**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Init.

Building Permit

3.7.1

Capitalization**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,

15.1.3

Change Orders, Definition of**7.2.1****CHANGES IN THE WORK**2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1,

9.3.1.1, 11.3.9

Claims, Definition of**15.1.1****CLAIMS AND DISPUTES**3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4****Claims for Additional Time**3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5****Concealed or Unknown Conditions, Claims for****3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up**3.15, 6.3**

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

Commencement of the Work, Definition of**8.1.2****Communications Facilitating Contract****Administration**3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND**9****Completion, Substantial**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,

13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder**15.4.4****CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**1.1.4, **6****Construction Change Directive, Definition of****7.3.1****Construction Change Directives**1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts**5.4, 14.2.2.2****Continuing Contract Performance****15.1.3****Contract, Definition of****1.1.2****CONTRACT, TERMINATION OR SUSPENSION OF THE**5.4.1.1, 11.3.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The**1.1.1**

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

Contract Documents, Definition of**1.1.1****Contract Sum**3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7,

9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of**9.1**

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

Contract Time, Definition of**8.1.1**

Init.

CONTRACTOR**3****Contractor**, Definition of**3.1, 6.1.2****Contractor's Construction Schedules****3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2**

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

Contractor's Liability Insurance**11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2****Correlation and Intent of the Contract Documents****1.2****Cost**, Definition of**7.3.7**

Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching**3.14, 6.2.5**

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of**8.1.2****Date of Substantial Completion**, Definition of**8.1.3****Day**, Definition of**8.1.4**

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Defective Work, Definition of**3.5.1**

Definitions

1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3.1, 7.3.9, 15.1, 15.2

Documents and Samples at the Site**3.11****Drawings**, Definition of**1.1.5**

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies**10.4, 14.1.1.2, 15.1.4**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Init.

Equipment, Labor, Materials or
 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1,
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1,
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2,
 10.4.1, 14.3, 15.1.5, 15.2.5

Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work
 (See Defective or Nonconforming Work)

Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
 12.3.1, 14.2.4, 14.4.3

Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance
 11.3.1.1

GENERAL PROVISIONS

1

Governing Law
13.1
 Guarantees (See Warranty)

Hazardous Materials
 10.2.4, 10.3

Identification of Subcontractors and Suppliers
 5.2.1

Indemnification
 3.17.1, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
 11.3.7

Information and Services Required of the Owner
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision
15.2

Initial Decision Maker, Definition of
 1.1.8

Initial Decision Maker, Decisions
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4.1

Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders
 1.1.1

Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of
1.1.7

Insurance
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2

Insurance, Contractor's Liability
11.1
 Insurance, Effective Date of
 8.2.2, 11.1.2

Insurance, Loss of Use
11.3.3

Insurance, Owner's Liability
11.2

Insurance, Property
 10.2.5, 11.3

Insurance, Stored Materials
 9.3.2, 11.4.1.4

INSURANCE AND BONDS
11
 Insurance Companies, Consent to Partial Occupancy
 9.9.1, 11.4.1.5

Insurance Companies, Settlement with
 11.4.10

Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest
13.6

Interpretation
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
 4.2.11, 4.2.12, 15.1.4

Judgment on Final Award
 15.4.2

Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
 8.3.1

Laws and Regulations
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,
 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,
 13.6.1, 14, 15.2.8, 15.4

Liens
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
 12.2.5, 13.7, 15.4.1.1

Limitations of Liability
 2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7,
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,
 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Init.

Loss of Use Insurance**11.3.3**

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

Mediation8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1**Minor Changes in the Work**1.1.1, 3.12.8, 4.2.8, 7.1, **7.4****MISCELLANEOUS PROVISIONS****13****Modifications**, Definition of**1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1

Mutual Responsibility**6.2****Nonconforming Work, Acceptance of**9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

Notice, Written2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1**Notice of Claims**3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

OWNER**2****Owner**, Definition of**2.1.1****Owner, Information and Services Required of the**2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

Owner's Liability Insurance**11.2****Owner's Loss of Use Insurance****11.3.3**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.4, 14.2.2

Owner's Right to Clean Up**6.3****Owner's Right to Perform Construction and to Award Separate Contracts****6.1****Owner's Right to Stop the Work****2.3**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

Ownership and Use of Drawings, Specifications and Other Instruments of Service1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1**Partial Occupancy or Use**9.6.6, **9.9**, 11.3.1.5**Patching, Cutting and**

3.14, 6.2.5

Patents

3.17

Payment, Applications for4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3**Payment, Certificates for**4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4**Payment, Failure of**9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

Payment Bond, Performance Bond and7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

Init.

Payments, Progress9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3**PAYMENTS AND COMPLETION****9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8,

14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4****Permits, Fees, Notices and Compliance with Laws**2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2**PERSONS AND PROPERTY, PROTECTION OF
10**

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of**3.12.2****Product Data and Samples, Shop Drawings**3.11, **3.12**, 4.2.7**Progress and Completion**4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3**Progress Payments**9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3**Project**, Definition of the**1.1.4**

Project Representatives

4.2.10

Property Insurance10.2.5, **11.3****PROTECTION OF PERSONS AND PROPERTY
10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,

10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,

15.2.8, 15.4

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,

9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2,

13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field**Conditions by Contractor****3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and

Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples
by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4,

6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2,

12.2.4, **13.4**, 14, 15.4**Royalties, Patents and Copyrights****3.17**

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property**10.2**, 10.4**Safety Precautions and Programs**3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4**Samples**, Definition of**3.12.3****Samples, Shop Drawings, Product Data and**3.11, **3.12**, 4.2.7**Samples at the Site, Documents and****3.11****Schedule of Values****9.2**, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7,

12.1.2

Shop Drawings, Definition of**3.12.1****Shop Drawings, Product Data and Samples**3.11, **3.12**, 4.2.7**Site, Use of****3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of the**1.1.6****Specifications, The**1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

Subcontractor, Definition of**5.1.1****SUBCONTRACTORS****5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Init.

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.4.5, 11.3.7

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of**9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5.1, 7.3.8

Sub-subcontractor, Definition of**5.1.2**

Subsurface Conditions

3.7.4

Successors and Assigns**13.2****Superintendent**

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience**14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 11.4.9, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.6

Termination by the Owner for Convenience**14.4**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE**CONTRACT****14****Tests and Inspections**

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

TIME**8****Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form**1.6****UNCOVERING AND CORRECTION OF WORK****12****Uncovering of Work****12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 11.4.7, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.4.5, 11.3.7

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

Weather Delays

15.1.5.2

Work, Definition of**1.1.3**

Init.

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2



Init.

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect and Contractor shall each, however, be entitled to performance and enforcement of obligations under the other's Contract intended to facilitate performance of their respective duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 INITIAL THIRD PARTY BENEFICIARY

Nothing contained in the Contract Documents shall create a contractual relationship between the Owner and any third party; however, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts, all subcontracts, purchase orders as well as all agreements between the Contractor and third parties. The Contractor shall incorporate the obligations of this Contract into its respective subcontracts, supply agreements and purchase orders.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as

Init.

binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 The term "Provide", as used in the Contract Documents, includes furnishing all labor, supervision, tools, materials, supplies, equipment, shop drawings, product data and samples, together with all services, accessories and costs associated with performance of the work, for production of an item or system usable in the completed project.

§ 1.2.5 Where conflict or discrepancies exists within or between the Contract Documents or between the Contract Documents and applicable industry standards or applicable codes, ordinances, or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used:

- .1 The Agreement, GMP Amendment and Change Orders.
- .2 These General Conditions.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 Supplementary Conditions, if any.
- .5 Specifications.
- .6 Drawings.

§ 1.2.6 NOT USED

§ 1.2.7 Dimensions indicated on any Drawings are required dimensions, regardless of measurement per given scale. The Contractor shall verify at the Site necessary levels, measurements, etc., for proper and complete fabrication, assembly and installation of Work. Where dimensions are not indicated, and exact location is not apparent, the Contractor shall notify the Owner and Architect. Omissions of details, figures or notes on one drawing, where another drawing correctly sets forth such information, shall not be cause for additional charges or claims.

§ 1.2.8 The better quality or greater quantity of work or materials shall be estimated upon and, unless otherwise ordered by the Architect in writing, shall be performed or furnished. Explanatory notes on Drawings take precedence over Specifications. Figures given on Drawings take precedence over scaled measurements, and large scale details take precedence over small Drawings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The

Init.

Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Failure of the Owner's Representative, in any one or more instances, to insist on strict performance of any of the terms of the Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment for the future insistence of any such terms or options.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 NOT USED

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, soil reports and subsurface investigations, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Utility locations provided by the Owner are based only upon the best information available to the Owner and Contractor shall field verify utility locations before and during construction; however, any inconsistencies in the location of the Utilities shall remain a basis for an equitable adjustment in the Contractor's time and sum, if applicable.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and, with the exception of utility locations and subject to section 2.2.3, the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Owner shall incur no liability for delays occasioned by any stop-Work order issued in accordance with this Paragraph.

Init.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR**§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents and has notified the Architect of and requested clarification of any known discrepancies discovered during the building or proposal period.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor will generally review and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner pursuant to Section 3.2 before commencing work at the site and at frequent intervals during its progress.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and

Init.

lawful orders of public authorities. Contractor will generally review site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or performing work at the site; however, the Contractor shall be entitled to rely upon the accuracy and completeness of the Contract Documents, plans and specifications.

§ 3.2.5 The Contractor is not responsible for the sufficiency of the Contract Documents for their intended purpose. The Contractor will make inspections during the progress of the work to confirm that work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the work and Referenced Standards set forth in the plans and specifications, and that observable portions of the work previously performed by others are in proper condition to receive subsequent work.

§ 3.2.6 If the Contractor knows that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by Authorities Having Jurisdiction, or the Owner or its designees acting in the capacity of Authorities Having Jurisdiction, or Referenced Standards set forth in the plans and specifications, the Contractor must promptly notify the Owner and Architect of the non-compliance as provided in Section 3.2.7 and request direction before proceeding with the affected Work.

§ 3.2.7 The Contractor must promptly notify the Owner and Architect in writing of any known errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and the Owner and the Architect must timely provide the Contractor in writing any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any known variances discovered from its review of the Site and physical data and Site conditions observed.

§ 3.2.8 If the Contractor performs any Work involving any known error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor discovers during the review required in Sections 3.2.1 through 3.2.5, without prompt written notice to the Owner and the Architect, the Contractor does so at his own risk and expense, but only to the extent of repair costs, which could have been avoided by timely notice.

§ 3.2.9 If the Contractor claims that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 through 3.2.8, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 through 3.2.8, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had timely performed such obligations. The Contractor shall not be liable to the Owner or Architect for any damages, costs, or expenses resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Construction Manager knows of such error, omission, inconsistency or issue and proceeds with the work in the affected areas without notice to the Owner or Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the same skill and attention as Contractor's performing the same services on projects of the same size, complexity and general location as this Project, and in accordance with all local and Florida licensing requirements and Florida Building Code. Consistent with industry standards, the Contractor shall have the right to rely upon the accuracy and completeness of the Contract Documents, and that the Plans and Specifications comply with the applicable Building Codes, requirements and laws. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of

Init.

changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Neither the presence or absence of the Owner or Architect shall relieve the Contractor from any requirements of the Contract Documents.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 OWNER DIRECT PURCHASE

§ 3.4.4.1 The Contractor is not a tax expert, and the Owner represents and warrants to the Contractor that The Owner is tax exempt and may wish to exercise its right to purchase directly various construction materials, supplies and equipment that may be part of this Contract. The Owner will, via its purchase orders, purchase that material and the Contractor shall assist the Owner in the preparation of purchase orders. The Owner may direct the Contractor to prepare the purchase order on the Owner's form and make ready for verification and execution by the Owner. The materials shall be purchased from the vendors / suppliers originally selected by the Contractor, for the price originally negotiated by the Contractor. The Contractor shall prepare a complete list of materials, supplies and equipment, including the cost of each item, for the project and the Owner will advise Contractor in writing which items from the list the Owner wishes to purchase directly.

§ 3.4.4.2 At a time deemed acceptable to the Owner, the Contract amount shall be reduced by the net, undiscounted amount of the purchase order, plus all sales taxes and surtax as levied. Issuance of the purchase orders by the Owner does not change any of the Contractor's responsibilities regarding material purchases, or installations, with the exception of the payments for the materials purchased. The Contractor remains responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediton, receiving and unloading, certifying the accuracy of shipping tickets and invoices, installation, cleaning, all applicable warranties and that all materials purchased meet the requirements of the Contract Documents. The Contractor shall certify all invoices as accurate and acceptable and forward to the Owner the certified invoices for payment by the Owner.

§ 3.4.4.3 In the event that materials, supplies or equipment purchased under this option are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Contractor to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Contractor any claims the Owner has against the responsible party resulting from the purchase order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Contractor in such legal action.

§ 3.4.4.4 The Contractor agrees to execute a Contractor's Direct Material Purchase Affidavit and to submit the affidavit to the Owner along with the above-described list of materials, supplies, and equipment, as agreed to between the Owner and Contractor. Tax savings shall be returned to the Owner via change order.

§ 3.4.4.5 In the avoidance of doubt, all tax saving from Owner direct purchases shall be to the benefit of the Owner, and under no circumstances shall such tax saving from Owner direct purchases be subject to 'shared saving' provision under this Agreement.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from construction defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Except as a result of design issues, Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time the GMP is established, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.1.1 Certain permits, regulations and fees may apply to construction work within the scope of the Contractor's Work included or involved in this Project when such work takes place beyond the limits of the Project Site. This may include but not be limited to hauling and disposal of materials and debris resulting from demolition. The Contractor shall pay the cost of any and all fees required by such offsite work. The Contractor and Owner may clarify, designate or change in the GMP Amendment to this Agreement who will pay for permits, regulation, fees or other Costs provided such clarification, designation or change is set forth in the GMP Amendment and the GMP Amendment shall govern.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in Contract Sum or Contract Time shall be allowed pursuant to this Article to the extent the concealed or unknown condition should have been reasonably discovered by Contractor during Pre-proposal site inspections, review, or preconstruction services.

Init.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

Init.

§ 3.10.4 If the Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, it is understood and agreed that such schedule is for the Contractor's sole use and benefit, and no liability of the Owner to the Contractor will be applicable for any failure of the Contractor to so complete prior to such contractually required dates, whether or not Owner approved such schedule. At all times the Contractor shall have control of the project schedule logic, sequence and methods, and Contractor may alter such schedule, logic, sequence and method as the Contractor may choose to timely complete the Project. Neither the Owner nor anyone other than the Contractor shall, directly or indirectly, control or change the Contractor's logic, sequence or method for scheduling the activities and work to complete the Project.

§ 3.10.5 At the Owner's option the Contractor shall provide a schedule utilizing critical path techniques to measure the progress of the Work. Such schedules shall be subject to Owner's and Architect's written approval.

§ 3.10.6 Float or slack is not for the exclusive use or benefit of either the Owner or the Contractor, except to the extent the schedule indicating an intention to achieve completion of the Work prior to contractually required dates. Extensions of time for performance will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding the above, the Contractor shall only be entitled to an extension of time for an excusable delay to the critical path of the Work that delays completion of the Project beyond the completion date stated in the Agreement unless otherwise provided in the Contract Documents.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. As-Built Drawings shall be updated monthly and shall provide as much reasonable accuracy as consistent with industry standards, and submission of completed As-Built Drawings to Owner shall be a condition precedent to Final Payment. Completed As-Built Drawings shall be submitted in paper document and digital form.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them for the limited purpose of, (2) determining and verifying materials, field measurements and field construction criteria related thereto, or will do so

Init.

and (3) checking and coordinating the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof, except for errors and omissions which are within the Architect's design responsibilities.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 The Contractor shall be responsible for the permitting, erection, maintaining and removal of all construction signage. The Contractor must submit all sign copy for approval prior to erecting or displaying same.

§ 3.13.2 The Contractor and Owner shall meet promptly after execution of the Agreement to determine reasonable requirements for ingress and egress from the site. Reasonable locations for staging, parking and a single construction entrance shall be designated by Contractor, subject to the Owner's approval.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor by deductive Change Order.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 For one hundred dollars (\$100.00), which is included in the contract price, the other good and valuable considerations, receipt of which is hereby acknowledged by the Contractor as consideration for the indemnity herein, to the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Owner shall cause any other contractor who may have a contract with the Owner to perform construction or installation Work in the areas where Work will be performed under the Owner/Contractor Agreement, to agree to indemnify the Owner and Contractor and hold them harmless from all claims for bodily injury and property damage that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to the Contractor

§ 3.18.4 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure

to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

§ 3.18.5 Notwithstanding any other provision of this agreement, nothing contained in this agreement shall be construed as a waiver of Owner's right to sovereign immunity under Section 768.28, Florida Statutes, or the limitations of liability set forth therein. The Parties shall not be liable to the other for punitive damages or interest for the period before judgment except as required by the Local Government Prompt Payment Act.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise

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such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 or Termination for Convenience by Owner pursuant to Paragraph 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the Contractor, CDI or other insurance, or any surety, if any, obligated under any insurance policy or bond relating to the Contract.

§ 5.4.2 If and upon the Owner exercising its right to accept an assignment of the Subcontract pursuant to the above provision, the Owner thereby accepts and assumes all the obligations, liabilities and duties of the Contractor with regard to the assigned Subcontract. Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Subcontracts between Contractor and its Subcontractors shall provide for the assignment of those subcontracts from Contractor to Owner at election of Owner upon termination of Contractor.

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§ 5.4.3 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be adjusted for increases in direct cost resulting from the suspension beyond the 30 days.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate Contractors, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. All such costs shall be paid by Change Order, as applicable.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK**§ 7.1 GENERAL**

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Agreement on and execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the Change and to the impact of the Change on unchanged Work, including all direct and indirect costs of whatever nature, and all adjustments to the Contract Schedule unless expressly reserved in the Change Order.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as provided by Article 7.3, a change in Contract Sum or Contract Time shall be accomplished only by Change Order or as provided in the Contract Documents with pending and unresolved claims. No course of conduct, verbal discussions, or dealings between the parties shall be the basis of claim to any change in the Contract Sum or Contract Time.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 In determining adjustments to the Contract Sum, Section 7.3.3 shall apply.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Authorization provides for an adjustment to the Contract Sum, the adjustment shall be based on the total sum of the following:

- .1 the Cost of the Work as defined in Article 6 of the Owner/Contractor Agreement for the Change in the Work;
- .2 a General Conditions factor of ten percent (10%) for Change Orders which do not impact the Substantial Completion Date. For Change Orders which do impact the Substantial Completion Date, the General Conditions shall be subject to an equitable adjustment, and;
- .3 the Contractor's Fee as described in Subparagraph 5.1.2 of the Owner/Contractor Agreement

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, health related crises, including without limitation pandemics/epidemics, or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.2.1 Notwithstanding Subparagraph 8.3.1, if the Work is delayed for any reason set forth in Section 8.3.1, including further but not limited to weather delays, and such delays in the total cumulative impact is less than twenty (20) days regardless of the cause (except delays to the extent caused by the Contractor or its Subcontractors of any tier), then Contractor shall be entitled to an extension of time of Contract Time but not an adjustment in the Contract Sum or GMP. In the event the Work is delayed for any reason set forth in Section 8.3.1, including further but not limited to weather delays, and such delays in the total cumulative impact is for twenty (20) days or longer, regardless of the cause (except delays to the extent caused by the Contractor or its Subcontractors of any tier), then Contractor shall be entitled to an extension of time of Contract Time plus an equitable adjustment in Contract Sum or GMP. In the GMP Amendment, the Parties may establish an agreed amount per day as the equitable adjustment Cost per day related to the item of Contractor's General Conditions. In the event Contract is entitled to an equitable adjustment in Contract Sum under this Agreement, then the Contractor's General Condition Costs per day as established in the GMP Amendment shall control and govern as the Contractor's entitlement for General Condition Costs.

§ 8.3.3 This Section 8.3 does not preclude recovery of direct damages for delay by either party under other provisions of the Contract Documents except only the first twenty (20) days caused only by the Owner; otherwise delays shall be subject to compensation as set forth pursuant to the Contract Documents. In the event Contractor accelerates its work for any reason whatsoever, Owner shall pay no overtime inefficiencies to Contractor for such acceleration and Contractor hereby expressly waives its right to recover such overtime inefficiencies which the Contractor elects to implement due to Contractor delays.

§ 8.3.4 If Contractor's delays cause the Substantial Completion of the Project to not be timely achieved pursuant to the Agreement and subject to all adjustments or extensions to Contract Time, then Owner will suffer certain damages which the parties recognize are difficult and costly to establish and quantify. Therefore, the Parties agree that to the extent the Contractor, its Subcontractors of any tier or those for whom the Contractor is legally liable working under Contractor's scope of Work, actually cause a delay to timely achieving the Substantial Completion of the Project, then for each day of such Contractor caused delay, the Contractor shall pay the Owner a Liquidated Damage. The Parties shall establish such a Liquidated Damage Amount per day in the GMP Amendment and the Parties agree that such Liquidated Damage Amount is reasonably related to unknown actual damages and is not a penalty.

§ 8.3.5 Contractor's written claims for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices and any other data which provides proof of the events which are the basis for the claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events, which underlie the time extension request.

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ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Wherever the term "Contract Sum" appears throughout the Contract Documents it shall be deemed to mean "Guaranteed Maximum Price".

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a

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representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*, within fourteen (14) days after receipt of the Application of Payment with the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable direct costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. For the Work or any designated portion thereof to be "Substantially Complete", the Work must also satisfy all of the following conditions (except to the extent the same shall be specifically waived or modified in writing by Owner):

- .1 The Work has been Substantially completed in accordance with the Contract Documents (except for Punch List work) to the extent required for Owner to obtain an occupancy permit and such permit(s) shall have been granted by the appropriate authorities for all of the Work; however, should any such occupancy permit not be issued due to causes other than the Contractor, then this condition of occupancy permit shall not be applicable;
- .2 All HVAC, plumbing and electrical systems included in the Work are functioning substantially in accordance with the Contract Documents;
- .3 All life safety systems included in the Work are functioning in accordance with the Contract Documents;
- .4 A Certificate of Substantial Completion has been issued by the Architect as required under Paragraph 9.8.
- .5 All elevators, if any, included in the Work are functioning in accordance with the Contract Documents;
- .6 All offices, rooms and public areas are ready to receive, or have received if required for issuance of a Certificate of Occupancy, furniture, fixtures and equipment supplied by the Owner.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the

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Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.* Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Payment by Owner shall be made in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.*

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a

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Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. As a condition precedent to Final Payment, and as part of the Application, Contractor shall deliver to the Owner all warranties, guarantees and other close out documents, including As-Builts, as required under the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. *Et Seq.* If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by

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any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(Paragraphs deleted)

§ 10.2.8 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibilities for the safety of persons and property and for compliance with all Federal, State and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.2.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity subject to and without waiving the limits of liability set forth in Section 768.28, Florida Statutes.

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§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor’s fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR’S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers’ compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor’s obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, as applicable. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

a. Commercial General Liability:	\$4,000,000	General Aggregate Limit (other than Products-Completed Operations)
	\$4,000,000	Products-Completed Operations Aggregate Limit
	\$2,000,000	Personal and Advertising Liability
	\$2,000,000	Each Occurrence Limit
	\$1,000,000	Fire Legal Liability
	\$ 10,000	Medical Expense Limit (each person)

Init.

	\$1,000,000	Employee Benefit Liability
b. Business Automobile Liability	\$1,000,000	Bodily Injury and Property Damage Combined Single Limit
c. Excess Umbrella Liability	\$10,000,000	Per Occurrence
	\$10,000,000	Annual Aggregate

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to obtain and maintain required insurance shall be grounds for termination of the Contract by the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for maintaining the Owner's existing liability insurance for risks not associated with the Project.

§ 11.2.2 If Owner hires separate contractors to perform work for, or in or around, the Project, it shall include in its contracts with each separate contractor the following provisions: Contractor and its officers, directors, partners, members, employees and agents shall be (i) named as an additional insureds on a primary, non-contributory basis to any commercial general liability, pollution liability and excess liability insurance policies and (ii) provided a waiver of subrogation on all workers compensation and professional liability insurance policies.

§ 11.2.3 NOT USED

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The Work shall be insured by such property insurance, until Substantial Completion of the Work, or designated portion thereof is achieved. This insurance shall include the Owner and Contractor as named insureds. The Subcontractors and Sub-subcontractors shall be additional insureds as their interests may appear.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, equipment breakdown, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The property insurance may include sublimits for one or more of the coverages required herein.

§ 11.3.1.2 NOT USED

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§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall be responsible as a Cost of the Work for costs not covered due to such deductibles, except that Owner shall be solely responsible for any and all costs not covered due to deductibles arising out of any loss due to flood (including inundation, seepage and sewer back-up), earthquake, named windstorm, hail, volcanic eruption or terrorism.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 NOT USED

§ 11.3.3 NOT USED

§ 11.3.4 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner as a Cost of Work..

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Work, or if after Substantial Completion of the Work (or a designated portion thereof) property insurance is to be provided on the completed Work (or designated portion thereof) through a policy or policies other than those insuring the Work (or designated portion) prior to Substantial Completion, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. Contractor's obligation to provide any insurance policy is contingent upon Owner signing a confidentiality agreement, agreeing to keep confidential the terms and conditions of such insurance policy or policies provided to Owner by Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against each other for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waiver requirements in this paragraph apply to, but are not limited to, insurance coverage provided by private sector insurers and self-insured contractors or corporations.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Prior to beginning Work, the Contractor shall furnish and pay for a Performance and Payment Bond on the Project in the amount of 100% of the Contract Price. The liability under said Bond shall be coextensive with the Contractor for all damages arising out of Contractor's breach of this agreement or failure to perform, including, but not limited to, delay damages, liquidated damages (if any), completion of punch lists and the Contractor's responsibilities under subparagraph 12.2.2.1 herein. "Conditional" Payment Bonds under Florida Statutes, Section 713.245, shall not be acceptable. Proper Power of Attorney shall accompany said bonds. Bonds shall be on forms provided by and approved by Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 Bonds shall be secured through sources acceptable to the Owner. To be acceptable to the Owner as Surety for Performance and Payments Bonds, a Surety Company shall comply with the following provisions:

- .1 The Surety Company must be authorized to do business in the State of Florida.
- .2 The Surety Company shall have been in business and have a record of successful continuous operations for at least five years.
- .3 The Surety Company shall have at least A.M. Best Company Policyholder's Rating of "A" and "Financial Size Category" of Class XI or an equivalent rating from the Insurance Commissioner if not rated by Best's.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during

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that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work nor to Owner's right to make claim with respect to latent defects.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. In addition, the Owner and Contractor designate the following representatives to receive any Notice required under the Contract Documents, to wit:

For the Owner:
Denise Bevan, City Manager
160 Lake Avenue
Palm Coast, FL 32164

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For the Contractor:
 Jeffrey Williams, Project Executive
 Wharton-Smith Inc. Construction Group
 750 Monroe Road
 Sanford, FL 32771

§ 13.3.1 Written notice requirements of this Contract shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. Contractor expressly waives its rights to claim any waiver by Owner of such notice requirements based upon Owner having actual knowledge, implied, verbal or constructive notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.2.1 The Owner reserves the right to perform additional tests of materials, work and equipment provided under this Contract and will pay all costs involved in such additional tests. In the event the test results establish a construction defect in violation of the Contract Documents, the Contractor agrees to correct such construction defects and identified deficiencies, arrange for, and pay the cost of all re-testing and repeat the process until re-test reports indicate all deficiencies have been corrected. In all cases, re-tests shall be performed by the same testing agency who performed the initial test.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

Any statutes of limitations shall commence to run, and all causes of action shall be deemed to have accrued, in accordance with applicable Florida law.

§ 13.8 E-VERIFY REGISTRATION AND USE

- .1 Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Contractor 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 Contractor employees hired on and after January 1, 2021.
- .2 Subcontractors:
 - a) Contractor shall also require all subcontractors performing work under this Contract to use the E-Verify system for any employees it may hire during the term of this Contract.
 - b) Contractor 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.
 - c) Contractor shall maintain a copy of all subcontractor affidavits for the duration of this Contract and provide it to the City upon request.
- .3 Contractor must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from Contractor 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.
- .4 Failure to comply with this provision is a material breach of the Contract and shall result in the immediate termination of this Contract without penalty to the City. Contractor shall be liable for all cost incurred by City to secure a replacement contract, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**§ 14.1 TERMINATION BY THE CONTRACTOR**

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty (30) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit and costs incurred by reason of such termination, demobilization costs, and costs resulting from compliance with the Contract Documents and damages.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 files for bankruptcy (voluntary or involuntary)

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work performed to date, and costs resulting from compliance with the Contract Documents, but will not be paid for anticipated profits on unperformed Work. The Parties agree that in the event of termination by the Owner for convenience, in addition to payment for Work executed, the Construction Manager shall also be compensated an amount equal to forty-five (45) days of general conditions plus 4.25% for overhead and profit.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice to the Architect and the other party. Claims must specifically detail all facts and issues substantiating the Claim, including all costs and expenses incurred. Claims must be made in writing and timely filed in accordance with the specific requirements of the Contract Documents and under no circumstances whatsoever be based upon actual or verbal notice or lack of prejudice to the other party. An additional Claim after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, then such Claim shall be filed in accordance with this Section 15.1.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

(Paragraph deleted)

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

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- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Notwithstanding the foregoing, the Contractor shall be entitled to an equitable adjustment in its fee and general conditions in the event of delays beyond its control as set forth in Subparagraphs 8.3.1 and 8.3.2.1.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 All controversies, claims, or disputes arising out of this Agreement shall initially be subject to a non-binding mediation as condition precedent to the commencement of litigation in the Circuit Court of Flagler County, Florida. The request for mediation may not be made concurrently with the filing of a lawsuit, but such mediation shall proceed in advance of the lawsuit, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties. The mediator shall be selected by mutual agreement of the parties, and such mediation shall be held at a mutually agreeable time and place in Flagler County, Florida. A request for mediation shall be made in writing, delivered to the other party to the Contract within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph 15.3.1, but in no event after the expiration of the applicable statute of limitations.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/03/2023

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 any rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Marsh & McLennan Agency Bouchard Region 1 N. Dale Mabry Hwy, Suite #450 Tampa, FL 33609	CONTACT NAME: Certificate Department PHONE (A/C, No, Ext): 727 447-6481	FAX (A/C, No):	
	E-MAIL ADDRESS: certificates@bouchardinsurance.com		
INSURED Wharton-Smith, Inc. 750 Monroe Road Sanford, FL 32771	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Amerisure Insurance Company		19488
	INSURER B : Amerisure Mutual Insurance Company		23396
	INSURER C : XL Specialty Insurance		37885
	INSURER D : Berkley Assurance Company		39462
	INSURER E : Amerisure Partners Insurance Company		11050
INSURER F :			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	GL20361081702	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
E	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	CA20361071706	04/01/2023	04/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CU21171470102	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC203610917	04/01/2023	04/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Rented Equipment			UM00024961MA23A	04/01/2023	04/01/2024	\$ 2,500,000
D	Pollution Liab	Y		PCADB50218230423	04/01/2023	04/01/2024	\$ 10,000,000
D	Professional Liab			PCADB50218230423	04/01/2023	04/01/2024	\$ 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
PROJECT: City of Palm Coast Fire Station Package
 Certificate holder is additional insured as respects General Liability, Automobile Liability, Pollution Liability and Umbrella only if required by written contract, and subject to the terms, conditions and exclusions as specified in the policies.
 (See Attached Descriptions)

CERTIFICATE HOLDER City of Palm Coast, FL 160 Lake Avenue Palm Coast, FL 32164-2400	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Coverage is primary as respects to General Liability & Automobile Liability and non-contributory as subject to the terms, conditions and exclusions of your policy.

Waiver of subrogation applies in favor of certificate holder as respects General Liability, Automobile Liability and Workers Compensation only if required by written contract, and subject to the terms, conditions and exclusions as specified in the policy.

It is agreed by endorsement to the General Liability, Automobile Liability and Workers Compensation policy that this policy shall not be cancelled by the insurance carrier without first giving thirty (30) days prior written notice except for nonpayment of premium or if the first named insured elects to non renew.

Umbrella policy follows the forms/endorsements of the underlying General Liability, Automobile Liability and Workers Compensation policies.

Blanket Loss Payee applies for Rented and Leased Equipment.

Rented and Leased Equipment deductible:

\$2,500 standard deductible.

2% subject to a \$10K minimum deductible applies to all rented cranes.

BUILDER'S RISK COVERAGE

NAMED INSURED: Wharton-Smith, Inc.
COMPANY: XL Specialty Insurance Company
NAIC #37885 AM Best Rating: A (Excellent), XV (\$2 Billion or greater)
POLICY TERM: 4/1/2023 - 4/1/2024
POLICY NUMBER: UM00024960MA23A

COVERED PROPERTY AND PREMISES DESCRIPTION

New construction and remodeling of waste or water treatment plants; new construction and non-structural renovations of commercial buildings at various premises within the state of Georgia, Florida, North Carolina, South Carolina, Virginia, Mississippi, Alabama, Louisiana, Texas and Tennessee

SUMMARY

COVERAGE	LIMIT OF INSURANCE
Covered Property at Premises Described Above – Consisting of Frame or Joisted Masonry Construction	\$2,500,000
Covered Property at Premises Described Above – Consisting of Non-Combustible, Masonry Non-Combustible, Semi Fire-Resistive and Fire-Resistive Construction (Including Water Treatment Plants Except on Islands)	\$100,000,000
Covered Property at Premises Described Above – On Islands (Water Treatment Plant Projects Only)	\$5,000,000
Soft Costs	\$1,000,000

DEDUCTIBLE OR WAITING PERIOD

COVERAGE	DEDUCTIBLE OR WAITING PERIOD
All Coverages Unless Otherwise Specified Below	\$5,000 projects \$50,000,000 and under. \$25,000 on projects over \$50,000,000.
Named Storm – On Islands	12.5%, Subject to \$500,000 minimum on projects up to \$8M. 10.0%, Subject to \$500,000 minimum on projects over \$8M.
Named Storm – Water Treatment Plant Projects Only	2%, Subject to \$5,000 Minimum on projects \$50,000,000 and under. 2%, Subject to \$25,000 minimum of projects over \$50,000,000.
Named Storm – Frame, Joisted Masonry or Non-Combustible Construction	5%, Subject to \$5,000 Minimum on projects \$50,000,000 and under.

	5%, Subject to \$25,000 minimum on projects over \$50,000,000.
Named Storm – Masonry Non-Combustible, Semi Fire-Resistive or Fire-Resistive Construction	3%, Subject to \$5,000 Minimum on projects \$50,000,000 and under. 3%, Subject to \$25,000 minimum of projects over \$50,000,000.
Flood – Zones C or X (Unshaded)	\$25,000
Flood – Zone B or Shaded X	\$50,000
Flood – All Other Zones and Water Treatment Projects on Islands	\$500,000
Earthmovement and Volcanic Eruption “Pacific Northwest Seismic Area” “High Hazard Seismic Zones”	1% Subject to \$50,000 Minimum
Earthmovement and Volcanic Eruption “New Madrid Seismic Area”	1% Subject to \$50,000 Minimum
Earthmovement and Volcanic Eruption – All Other	\$25,000

SUBLIMITS

COVERAGE	LIMIT OF INSURANCE
Flood – Per Occurrence – Zone C or Unshaded X	\$75,000,000
Flood – Per Occurrence – Zones B & Shaded X	\$15,000,000
Flood – Per Occurrence – All Other Zones	\$1,000,000
Flood – Per Occurrence – Islands (Waste Water Treatment Plants Only)	\$500,000
Flood Annual Aggregate	\$75,000,000
Earth Movement and Volcanic Eruption – Pacific Northwest Seismic Area, High Hazard Seismic Zones	\$1,000,000
Earth Movement and Volcanic Eruption – New Madrid Seismic Area	\$10,000,000
Earth Movement and Volcanic Eruption – Per Occurrence	\$50,000,000
Earth Movement and Volcanic Eruption – Annual Aggregate	\$50,000,000
Windstorm or Hail – Premises Located on Islands	\$2,500,000

COVERAGE TERMS

- ◆ Maximum Limit of Insurance: \$100,000,000
- ◆ Valuation Clause: Replacement Cost
- ◆ Co-Insurance: 0%
- ◆ Additional Coverages – Testing: Electrical, Mechanical, Pneumatic and Hydrostatic
- ◆ Equipment Breakdown Endorsement
- ◆ Loss of Use Coverage Endorsement
- ◆ Permission to Occupy Endorsement
- ◆ Additional Coverage Limit for Valuable Papers - \$250,000

ADDITIONAL COVERAGE	LIMIT OF INSURANCE
Contract Penalty	\$250,000
Debris Removal	\$500,000 / 25%
Extra and Expediting Expenses	\$50,000
Fire Department Service Charge	\$25,000
Fire Protection Systems	\$25,000
Increase in Construction Costs	\$200,000 / 10%
Landscaping and Signs	\$100,000
Limited Coverage for "Fungi", Wet Rot and Dry Rot	\$25,000
Loss Adjustment Expenses	\$5,000
Demolition Cost and Increased Cost of Construction	\$500,000
Pollutant Cleanup and Removal	\$25,000
Preservation of Property	Covered
Property in the Open	\$25,000
Property that Supports your Business	\$50,000
Reimbursement for Returning Stolen Property	\$10,000
Reward Coverage	\$5,000
Site Preparation	Covered
Sewer and Drain Backup	Covered
Sinkhole Collapse	Covered
Temporary Premises	\$1,000,000
Temporary Structures	\$25,000
Transit	\$1,000,000
Unintentional Errors and Omissions	\$25,000
Virus, Harmful Code or Similar	\$10,000

Instruction	
Voluntary Parting	\$25,000

City of Palm Coast, Florida Agenda Item

Agenda Date : February 21, 2023

Department	STORMWATER & ENGINEERING	Amount	\$476,676.82
Division	ENGINEERING	Account	# 2107400-063000-49013 # 2107400-063000-49014 # 4300099-063000-49010
Subject	RESOLUTION 2023-XX APPROVING CONTRACTS FOR CONSTRUCTION MANAGEMENT SERVICES, PROFESSIONAL DESIGN SERVICES WITH MULTIPLE VENDORS, AND PROJECT CONTINGENCY FOR DESIGN AND CONSTRUCTION OF NEW FIRE STATIONS AND BAY DOOR REPLACEMENTS		
Presenter: Eric Gebo, Architect III			
Background:			
Council Priority:			
C. Safe and Reliable Services:			
3. Seek opportunities for the Community Center to help relieve parking Repurpose FS22, to preserve historical value and expand visitor awareness of Palm Coast.			
<u>UPDATE FROM THE FEBRUARY 14, 2023, WORKSHOP</u>			
This item was heard by City Council at their February 14, 2023, Workshop. There were no changes suggested to this item.			
<u>ORIGINAL BACKGROUND FROM THE FEBRUARY 14, 2023, WORKSHOP</u>			
These projects are part of the 10-year Capital Improvement Plan to address Fire Department response times, and involve the replacement of an existing station, modifications to existing stations, and the construction of a new facility.			
City staff advertised the project (RFSQ-SWE-22-60) and received eight (8) firms that were deemed responsive and responsible. City staff recommends awarding contracts for professional design services in the following amounts to Schenkel & Shultz, Inc.:			
<ul style="list-style-type: none"> • Fire Station 22 - \$ 54,900 • Fire Station 25 - \$150,050 • Fire Station 26 - \$157,030 			
City staff advertised the project (RFSQ-SWE-22-89) and received four (4) firms that were deemed responsive and responsible. City staff recommends awarding contracts for construction management services, in the amount \$64,696.82 to Wharton-Smith, Inc.			
<ul style="list-style-type: none"> • Fire Station 22 - \$ 3,980.18 • Fire Station 25 - \$30,358.32 • Fire Station 26 - \$30,358.32 			

Staff is also requesting a contingency of \$50,000, be approved, in case of unforeseen circumstances and/or unknown conditions, for a total project cost of \$476,676.82.

Funds for this project have been budgeted in the Capital Improvement and Fire Impact Fee Fund FY 23 Budget.

SOURCE OF FUNDS WORKSHEET FY 2023

Capital Projects Fund—43000099-063000-49010	\$ 520,000.00
Total Expenses/Encumbered to date	\$ 0
Pending Work Orders/Contracts	\$ 0
Current Contract	<u>\$ 75,546.84</u>
Balance	\$ 444,456.16

SOURCE OF FUNDS WORKSHEET FY 2023

Fire Impact Fee—21074000-063000-49013	\$ 500,000.00
Total Expenses/Encumbered to date	\$ 0
Pending Work Orders/Contracts	\$ 0
Current Contract	<u>\$ 197,074.99</u>
Balance	\$ 302,925.02

SOURCE OF FUNDS WORKSHEET FY 2023

Fire Impact Fee—21074000-063000-49014	\$ 500,000.00
Total Expenses/Encumbered to date	\$ 0
Pending Work Orders/Contracts	\$ 0
Current Contract	<u>\$ 204,054.99</u>
Balance	\$ 295,945.03

The contracts attached to this agenda item are in draft format and under final legal review. The attached Resolution is requesting City Council approval and to grant authority to the City Manager, or designee to negotiate, finalize, and execute the contracts for this project.

Recommended Action :

ADOPT RESOLUTION 2023-XX APPROVING CONTRACTS FOR CONSTRUCTION MANAGEMENT SERVICES, PROFESSIONAL DESIGN SERVICES WITH MULTIPLE VENDORS, AND PROJECT CONTINGENCY FOR DESIGN AND CONSTRUCTION OF NEW FIRE STATIONS AND BAY DOOR REPLACEMENTS

RESOLUTION 2023-____
CONSTRUCTION MANAGEMENT SERVICES
DESIGN AND CONSTRUCTION SERVICES FOR NEW FIRE STATIONS AND
MULTIPLE BAY DOOR REPLACEMENTS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING CONTRACTS WITH WHARTON-SMITH, INC., FOR CONSTRUCTION MANAGEMENT SERVICES, CONTRACTS WITH SCHENKEL & SHULTZ, INC. FOR PROFESSIONAL DESIGN SERVICES, AND A PROJECT CONTINGENCY FOR DESIGN AND CONSTRUCTION MANAGEMENT OF NEW FIRE STATIONS AND MULTIPLE BAY DOOR REPLACEMENTS; 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, Schenkel & Shultz, Inc., desires to provide design and construction phase services for the design of new fire stations and a bay door replacement project to the City of Palm Coast; and

WHEREAS, Wharton-Smith, Inc., desires to provide construction management services for the above-mentioned project; and

WHEREAS, the City Council of the City of Palm Coast desires for Schenkel & Shultz, Inc., to provide design and construction phase services for the design of new fire stations and multiple bay door replacements project; and

WHEREAS, the City Council of the City of Palm Coast desires for Wharton-Smith, Inc., to provide construction management services for the above-mentioned project.

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 CONTRACTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of the contracts with Wharton-Smith for

construction management services and the contracts with Schenkel & Schultz, Inc., for design and construction services, attached hereto and incorporated herein by reference as Exhibit “A.” Further, the City Council of the City of Palm Coast approves a project contingency for design and construction management of new fire stations and multiple bay door replacements project in the amount of \$50,000.00.

SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE. The City Manager, or Designee has the authorization to negotiate, finalize, and execute the necessary documents.

SECTION 4. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 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 21st day of February 2023.

ATTEST:

CITY OF PALM COAST

VIRGINIA A. SMITH, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

NEYSA BORKERT, CITY ATTORNEY

Attachments: Exhibit ‘A’ Contracts – Wharton-Smith, Inc., and Schenkel & Shultz, Inc.

DEPARTMENT OF FINANCIAL SERVICES
Public Records Requirements

Addendum A

1. Public Records Access Requirements.

- a. If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

2. Public Records Requirements Applicable to All Contractors.

- a. For purposes of the Contract, the Contractor is responsible for becoming familiar with Florida's Public Records law, consisting of chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law (Public Records Law).
- b. All requests to inspect or copy Public Records relating to the Contract must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Contract is governed by Public Records Law.
- c. If the Contractor has a reasonable, legal basis to assert that any portion of any records submitted to the Department is confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other legal authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the records the Contractor claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. The un-redacted copy of the records must contain the Contract name and number and must be clearly labeled "Confidential" or "Trade Secret." The redacted copy of the records should only redact those portions of the records that the Contractor claims are Confidential or Trade Secret. If the Contractor fails to submit a redacted copy of records it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
- d. If the Department receives a Public Records request, and if records that have been marked as "Confidential" or "Trade Secret" are responsive to such request, the Department will provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential or Trade Secret, the Department will notify the Contractor that such an assertion has been made. It is the Contractor's responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other legal authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Contractor claims as Confidential or Trade Secret in a legal proceeding, the Department will give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of records the Contractor claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its records are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten days of receipt of such notice from the Department.
- e. If the Contractor claims that the records are "Trade Secret" pursuant to section 624.4213, F.S., and all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.
- f. The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Contract or by Public Records Law.

Addendum A

1 of 2

3. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a “contractor” as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, F.S., or as otherwise provided by law.
- c. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- d. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- e. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT PUBLIC RECORDS AT:**

Telephone: (850) 413-3149
Email: PublicRecordsRequest@myfloridacfo.com
Mailing Address: The Department of Financial Services
Office of Open Government
PL-11, The Capitol
Tallahassee, Florida 32399-0301

A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.



DIVISION OF
STATE FIRE MARSHAL
 FLORIDA DEPARTMENT OF FINANCIAL SERVICES



FCO Grant Quarterly Status Report

Instructions: This form is to be completed by the grantee no less than once per quarter after the execution of the agreement and is to be done until all funds are dispersed. If you are also requesting reimbursement, please complete the reimbursement request form and attach the required documentation.

Grantee:	Reporting Period:	Contract Number:
Project Description:		
Attachments (Check):	Notice to Proceed	Photos
Reimbursement Request	Cert. of Occupancy	Inspection Reports
Other:		
1. Current Project Phase – Mark active phases and, if applicable, list percentage complete		
Land Purchased	Design	Site Prep
Construction	Inspection	Project Complete
2. Work Completed This Period:		
3. Work Anticipated Next Period:		
4. Problem Areas/Other Comments (Plan Revisions, Delays, Difficulties, etc):		
Grantee	Grantee Representative	
	I certify that the information provided above is true and correct per the terms of the Grant Agreement.	
Date	Printed Name/Title	Signature
Department	Comments/Notes	
	Review Date	Site Visit __Yes __No
		Contract Manager Signature



DIVISION OF
STATE FIRE MARSHAL
 FLORIDA DEPARTMENT OF FINANCIAL SERVICES



Grant Agreement

Attachment 5 - Grantee Reimbursement Request

I, _____, on behalf of
 (Print name of Grantee's Grant Manager)

_____, do hereby certify for
 (Print name of Grantee)

Contract No. _____ and Reimbursement Request No. _____ that:

- 1) The costs being claimed on this request are specifically for the project represented to the State in the budget appropriation
- 2) The costs being claimed on this request are for one or more of the construction components listed in the deliverable in Section 4, Deliverable, of the Scope of Work
- 3) The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project
- 4) The costs being claimed on this request were incurred after the date specified in Section C, Performance Period, of the Agreement document, and prior to the end of the Performance Period

 Signature of Grantee's Grant Manager

 Print Name



DIVISION OF
STATE FIRE MARSHAL
 FLORIDA DEPARTMENT OF FINANCIAL SERVICES



Reimbursement Detail

Request #	Grantee:	
Submit Date:	Grantee Address:	
Contract #	Grantee Contact:	
Deliverable:		

Vendor	Invoice #	Invoice Date	Invoice Description	Reimbursement Requested
			Request Total	\$
			Total Previous Payments	\$
			Total Grant Amount	\$
			<i>Remaining Funds</i>	\$

Grantee Certification: Sign here and complete the Grantee's Certification of Reimbursement Request on Page 1 to certify that the amount being requested for reimbursement is true and valid in accordance with the Agreement.

**Grantee Signature
& Date:**

SFM Use

Contract Manager
Receipt:

Component Checklist:	Vendor Invoice(s)	Payment	Tasks Performed	Funds Reconciled
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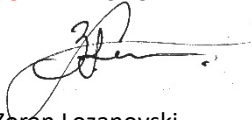
ATTN: Eric Gebo
RE: Palm Coast Fire Station No. 22
December 22, 2023 - Page 2

5. Bechtol Engineering & Testing, Inc./Geotechnical Engineers located in Deland, FL.

Clarifications:

- Fees include all printing and expenses.
- Fees for any required testing above and beyond the scope listed in the above items, are not included.
- Construction Administration (CA) services assume a construction duration of 12 months. If project construction timeline is extended due to phasing or out of sequence scope changes, SCHENKELSHULTZ will negotiate new lump sum terms or bill remainder of CA services on an hourly basis. Construction Administration services includes field observations, but does not include inspections.
- Permitting and application fees, of any kind, are not included.
- Except for documents required for permitting, all project submittals to be provided electronically.
- Any significant changes or out of sequence changes in scope, client changes or unforeseen conditions may require additional services.
- This proposal does not constitute a contract.
- Our scope of work and fees do not included any services or disciplines that are not specifically identified above or within the attached exhibits.
- Cost Estimating will be by the owner's Construction Manager.
- Proposal assumes a 5 (months) month design schedule and 12 month construction schedule.
- SCHENKELSHULTZ reserves the right to revise this proposal based on "contract terms", if and when provided.

Sincerely,
SCHENKELSHULTZ



Zoran Lozanovski
Associate

Attachments: Exhibit A – Scope of Project, Exhibit B – Scope of Services, Exhibit C – Schedule of Comp., Exhibit D – Deliverables, Exhibit E-Consultants Hourly Rates

Cc: DL, IZ/ SCHENKELSHULTZ

The scope of the project is for the design and construction of a new prototype fire station of approximately 9,150 square feet net as per SD Phase issued documents dated 9/18/23. The initial project will be a replacement of existing Fire Station No. 22. The project will be located on a 4.44 acre “green-field” site that is located at northeast corner of the intersection of Palm Coast Parkway and Colbert Lane. The new fire station prototype to meet all applicable codes and regulations including the Florida Building Code requirements for hardening of essential facilities. It is the City of Palm Coast’s intention to utilize this design as a prototype for future fire stations within the city.

The project scope will include architectural and engineering services for Design Development, Construction documents 90% and 100%, Permitting & GMP Confirmation, Construction Contract Administration, and LEED Silver Certification (energy modelling included).

Specific Architectural and Engineering disciplines included in the scope work include:

- Architectural & Interior Design
- Civil Engineering
- Landscape Architecture & Irrigation Design
- Structural Engineering
- Mechanical, Electrical, Plumbing, & Fire Protection Engineering
- Surveying
- Environmental Analysis and Permitting (Wetlands & Species)

The Project is required to achieve LEED Silver Certification.

The disposition/demolition of the existing Fire Station No. 22 is not a part of the scope of this project.

03 Design Development

Phase Three – Design Development

1. THE CONSULTANT shall prepare an outline specification (CSI div 1 through 26) with product cut sheets per division
2. THE CONSULTANT shall prepare exterior colored elevations.
3. THE CONSULTANT shall prepare an interior finishes sample board.
4. THE CONSULTANT shall prepare dimensioned, to scale drawings including base bid and alternate plans:
 - a. Updated floor plan with structural elements, furniture, equipment, and cabinetry. Plans or specifications to include infrastructure, furniture and fixed equipment such and the like, integration of that system with the building and furnishings design recommendations.
 - b. Structural foundation and framing plans.
 - c. Exterior elevation views of the building indicating materials of exterior envelope. North, south, east, west.
 - d. Building Sections.
 - e. Wall Sections.
 - f. Roof plan with all penetrations and equipment.
 - g. Typical roof detail.
 - h. Interior finish schedule.
 - i. Door and Window Schedule.
 - j. Reflected ceiling plan with all ceiling mounted systems.
 - k. Life safety plan with updated building code summary.
 - l. Civil site drawings.
 - m. Landscape and irrigation drawings.
 - n. Electrical, communication, lighting and A/V drawings.
 - o. Lighting design plan with photometric analysis.
 - p. Lightning protection plan.
 - q. Electrical and communications site plan.
 - r. Enlarged room plans with furniture and equipment layouts – mechanical, electrical, communications, restrooms and showers, lobby, rooms with cabinetry, plumbing, lobby and special finishes or special equipment.
 - s. HVAC, plumbing and fire protection drawings.
 - t. Building automation drawings.
 - u. Generators and redundant systems plans.
5. THE CONSULTANT shall conduct Meetings with the District, vendors and agencies as necessary to design and permit the building. THE CONSULTANT shall prepare Meeting Agenda and Meeting Reports for each encounter. The District will schedule District-CONSULTANT meetings. THE CONSULTANT will schedule vendor and agency meetings such that the District may be present at all meetings. The quantity of meetings will be on the basis of the preliminary schedule and includes additional meetings as

Predesign Services

\\v-filesrv02\public\community files\capital projects\fire station #22\03_schenkel schultz\01_sow\1_predesign - r6a_copc_2022 09 15.doc 1

necessary due to specific issues or needs as they arise.

Phase Four – Construction Documents

1. THE CONSULTANT shall provide all required documents for building permit application and jurisdictional agency submittals. Parrish Fire District infrastructure and building permits and any others required for the construction of the project. THE CONSULTANT shall respond to agencies and revise the construction documents as necessary to obtain agency approvals and for construction permits. The cost of jurisdictional agency application, registration, review and permitting fees are included with the exception of impact fees and building permit fees.
2. THE CONSULTANT shall prepare technical specifications division 1 through 26 – Construction Specification Institute format.
3. THE CONSULTANT shall revise the construction documents as directed by the OWNER.
4. THE CONSULTANT shall prepare dimensioned, to scale drawings:
 - a. Updated floor plan with structural elements, furniture, equipment, and cabinetry.
 - b. Plans or specifications to include infrastructure for the furniture and fixed equipment and the like.
 - c. Structural foundation and framing plans.
 - d. Structural details.
 - e. Exterior elevation views of the building indicating materials of exterior envelope. North, south, east, west.
 - f. Building Sections.
 - g. Wall Sections.
 - h. Building envelope and penetration details. Scale: 1 1/2 in = 1 ft.
 - i. Roof plan with all penetrations and equipment.
 - j. Roof detail. Scale: 3 in = 1 ft.
 - k. Interior finish schedule.
 - l. Door and Window Schedule.
 - m. Door and window details. Scale: 1 1/2 in = 1 ft.
 - n. Commercial kitchen plan.
 - o. Commercial kitchen details.
 - p. Reflected ceiling plan with all ceiling mounted systems.
 - q. Ceiling and wall details. Scale: 1 1/2 in = 1 ft.
 - r. Life safety plan with building code summary.
 - s. Civil site drawings.
 - t. Landscape and irrigation drawings.
 - u. Electrical, security, lighting and communications site plan.
 - v. Enlarged room plans with furniture and equipment layouts – mechanical, electrical, communications, restrooms and showers, lobby, rooms with cabinetry, plumbing, special finishes or special equipment.
 - w. Interior elevation views.
 - x. Cabinet details.
 - y. HVAC, plumbing and fire protection drawings.
 - z. Building automation drawings.
 - aa. Generator and redundant systems drawings.

bb. Lightning protection drawings.

5. THE CONSULTANT shall conduct Meetings with the District, vendors and agencies as necessary to design and permit the building. The CONSULTANT shall attend the PREBID conference. THE CONSULTANT shall prepare Meeting Agenda and Meeting Reports for each encounter. THE CONSULTANT will schedule vendor and agency meetings such that the District may be present at all meetings. The quantity of meetings will be on the basis of the preliminary schedule includes additional meetings as necessary due to specific issues or needs as they arise.

Construction Administration

1. THE CONSULTANT shall conduct bi-weekly and as needed field visits. In addition to the architect visits, security consultant, hardware consultant, electrical engineer, communications consultant, structural engineer and mechanical engineer will make periodic visits appropriate to their discipline. THE CONSULTANT shall prepare a field report for each visit. The number of visits is based on twice monthly visits for the duration of the construction schedule including the period between substantial completion and final completion.
2. THE CONSULTANT shall coordinate to the best of their ability within the standard of care, with the Contractor, District and District IT Division in locating all piping, conduit, infrastructure, structured cable and devices prior to concrete pours, drywall or other concealment with special attention being called to the power, security and communications systems.
3. THE CONSULTANT shall review contractor shop drawings and submittals.
4. THE CONSULTANT shall review contractor applications for payment.
5. THE CONSULTANT shall conduct a Substantial Completion report and prepare certificate with punch list of deficiencies.
6. THE CONSULTANT shall attend bi-weekly safety/ construction meetings with the District, Contractor, vendors and agencies and as necessary to administer the construction of the building. Contractor shall prepare Meeting Agenda and Meeting Reports for each encounter. The District will schedule the meetings and be present at all meetings. Additional site visits as necessary due to the stage of construction or specific issues that occur are also included.
7. THE CONSULTANT shall conduct a Final Completion inspection and verify Contractor's final pay application.
8. THE CONSULTANT shall prepare record documents based on receipt of Contractor's as-built documentation. Record drawings shall be prepared, utilizing a computer aided drafting program from Contractor's handwritten plan mark-ups of changes to the drawings. Record drawings to be submitted to the District in PDF and ACAD 2014 format.
9. THE CONSULTANT shall conduct a pre one year warranty walk.

Professional Services Compensation

PROJECT PHASE	STATUS	FEES
Pre-Design	COMPLETED	\$ COMPLETED
Schematic Design	COMPLETED	\$ COMPLETED
Design Development		\$ 168,752.89
Construction Documents		
90% Construction Documents		\$ 195,632.89
100% Construction Documents		\$ 99,033.16
Construction Contract Admin.		\$ 166,869.47
TOTAL FEES		\$ 630,288.41
Bidding & GMP Confirmation to be billed as an allowance		\$ 61,103.16

TOTAL LUMP SUM COMPENSATION (excluding allowance for bidding and permitting) 100% \$ 630,288.41

***Project to be billed by percentage of completed work, on a monthly basis.**

1. Per phased submittal, the Consultant will submit documents as follows to the City:
 - a. 8 ½ x 11 spec books, cut sheets, cost estimates, calculations, project requirements, manual, etc. (PDF files)
 - b. Full size sets of drawings 30x42 (PDF files)
2. The Consultant will submit prints as necessary to jurisdictional agencies.
3. The Consultant will submit Record Documents:
 - a. 8 ½ x 11 spec books, cut sheets, cost estimates, calculations, project requirements, manual, etc. (PDF files)
 - b. Full size sets of drawings 30x42 (PDF files)

CITY OF PALM COAST FIRE STATION 22 & 26
EXHIBIT E: CONSULTANT HOURLY RATES
 Dec-23

SCHENKELSHULTZ	
Partner	\$275.00
Principal	\$225.00
Project Director / Manager	\$200.00
Project Architect III	\$175.00
Project Architect II	\$150.00
Project Architect I	\$120.00
Senior Interior Designer	\$175.00
Designer IV	\$160.00
Designer III	\$150.00
Designer II	\$125.00
Designer I	\$115.00
Specification Writer	\$160.00
Construction Administration	\$180.00
Administration	\$90.00

BBM STRUCTURAL	
Principal	\$211.00
Associate	\$192.00
Project Manager	\$173.00
Senior Project Engineer	\$160.00
Project Engineer	\$144.00
Sr. BIM Technician	\$119.00
BIM Technician	\$111.00
Construction Admin./Inspector	\$129.00
Clerical	\$64.00

OCI CONSULTING ENGINEERS	
Principal	\$210.00
Registered Professional Engineer	\$195.00
Senior Project Manager / Engineering	\$170.00
IT / AV Systems Design Engineering	\$160.00
Lighting Design Engineering	\$160.00
Project Engineer	\$135.00
Senior Designer	\$110.00
Designer	\$90.00
CAD Operator	\$80.00
Clerical	\$70.00

BECTHOL ENGINEERING	
Principal Geotechnical Engineer	\$190.00
Senior Project Engineer	\$130.00
Senior Engineering Designer	\$90.00
Clerical Services	\$60.00

ZEV COHEN			
Principal	\$230.00	Engineer I	\$105.00
Department Director	\$215.00	Landscape Architect I	\$105.00
Senior Professional Engineer	\$190.00	Planner I	\$105.00
Senior Registered Landscape Architect	\$180.00	Designer	\$ 95.00
Project Manager	\$180.00	CADD Manager	\$120.00
Senior Planner	\$160.00	Senior CADD Technician	\$110.00
Senior Biologist/Env. Scientist/GIS Analyst	\$170.00	CADD Technician	\$100.00
Professional Engineer	\$155.00	Construction Administration Manager	\$145.00
Registered Landscape Architect	\$150.00	Construction Administrator	\$120.00
Environmental Scientist III/GIS Specialist III	\$135.00	Construction Administration Technician	\$100.00
Engineer III	\$135.00	IT Manager	\$105.00
Landscape Architect III	\$135.00	Certified Soil Scientist	\$170.00
Planner III	\$130.00	Certified Arborist	\$110.00
Environmental Scientist II/GIS Specialist II	\$115.00	Landscape Designer	\$ 95.00
Engineer II	\$115.00	Engineering Technician	\$ 85.00
Landscape Architect II	\$115.00	Biological Technician	\$ 70.00
Planner II	\$115.00	Technical Assistant	\$ 70.00
Senior Designer	\$110.00	Senior Clerical	\$ 65.00
Environmental Scientist I/GIS Specialist I	\$105.00	Clerical	\$ 55.00

December 23, 2023

Mr. Eric Gebo
 Architect III
 City of Palm Coast
 160 Lake Avenue
 Palm Coast, FL 32164

RE: Palm Coast Prototype Fire Station No. 26
SUBJECT: Professional Architectural & Engineering Design Task 2 (DD-CA)

Dear Mr. Gebo:

SCHENKELSHULTZ is pleased to submit the fee proposal below for the Task 2 design for your new prototype fire station. Our proposal is based upon the attached Exhibits A, Scope of Project, and Exhibit B, Scope of Work which are reflective of the discussions we have had with you to date. **SCHENKELSHULTZ** will be responsible for the Architectural and Engineering for the new prototype station of 9,084 square feet net as per SD Phase issued documents dated 9/18/23. Our proposal includes the attached exhibits: A-Scope of Project, B-Scope of Services, C-Schedule of Compensation, D-Deliverables, E- Consultant Hourly Rates.

The proposal will cover scope of work and fees starting with the Design Development phase in continuation to the design work completed thus far. Our fees for the upcoming Phases are outlined as follows:

PROJECT PHASE	FEES
Pre-Design	COMPLETED
Schematic Design	COMPLETED
Design Development	\$ 143,112.54
Construction Documents 90%	\$ 157,306.04
Construction Documents 100%	\$ 84,462.92
Construction Contract Admin.	\$ 125,780.75
LEED Certification	\$ INCLUDED
TOTAL FEES	\$ 510,662.24
Permitting & GMP Confirmation (To be billed separately as an allowance)	\$ 47,684.92

SCHENKELSHULTZ will be responsible for the architectural and interior design for the planning and schematic phases of the project and will utilize the following consultants to provide the additional necessary engineering services:

1. Atlantic Drafting & Surveying, Inc. located in Ormond Beach, FL
2. Zev Cohen & Associates, Inc./ Civil, Landscape & Environmental Engineering located in Ormond Beach, FL.
3. BBM / Structural Engineer located in Longwood, FL.
4. OCI Associates Inc./ MEP/FP/Security Engineers located in Orlando, FL.

200 E. Robinson Street, Suite 300, Orlando, FL 32801

407-872-3322 voice • fax 407-872-3303 • www.schenkelshultz.com

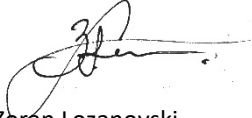
ATTN: Eric Gebo
RE: Palm Coast Fire Station No. 26
December 23, 2023 - Page 2

5. Bechtol Engineering & Testing, Inc./Geotechnical Engineers located in Deland, FL.

Clarifications:

- Fees include all printing and expenses.
- Fees for any required testing above and beyond the scope listed in the above items, are not included.
- Construction Administration (CA) services assume a construction duration of 12 months. If project construction timeline is extended due to phasing or out of sequence scope changes, SCHENKELSHULTZ will negotiate new lump sum terms or bill remainder of CA services on an hourly basis. Construction Administration services includes field observations, but does not include inspections.
- Permitting and application fees, of any kind, are not included.
- Except for documents required for permitting, all project submittals to be provided electronically.
- Any significant changes or out of sequence changes in scope, client changes or unforeseen conditions may require additional services.
- This proposal does not constitute a contract.
- Our scope of work and fees do not included any services or disciplines that are not specifically identified above or within the attached exhibits.
- Cost Estimating will be by the owner's Construction Manager.
- Proposal assumes a 5 (months) month design schedule and 12 month construction schedule.
- SCHENKELSHULTZ reserves the right to revise this proposal based on "contract terms", if and when provided.

Sincerely,
SCHENKELSHULTZ



Zoran Lozanovski
Associate

Attachments: Exhibit A – Scope of Project, Exhibit B – Scope of Services, Exhibit C – Schedule of Comp., Exhibit D – Deliverables, Exhibit E-Consultants Hourly Rates
Cc: DL, IZ/ SCHENKELSHULTZ

The scope of the project is for the design and construction of a new prototype fire station of approximately 9,084 square feet net as per SD Phase issued documents dated 9/18/23. The project is to be developed parallel with the development of Fire Station 22. The project will be located on a 13 acre “green-field” site that is located off of Seminole Woods Blvd and north of Airport Commerce Ctr Wy. The new fire station prototype to meet all applicable codes and regulations including the Florida Building Code requirements for hardening of essential facilities. It is the City of Palm Coast’s intention to utilize this design as a prototype for future fire stations within the city.

The project scope will include architectural and engineering services for Design Development, Construction documents 90% and 100%, Permitting & GMP Confirmation, Construction Contract Administration, and LEED Silver Certification (energy modelling included).

Specific Architectural and Engineering disciplines included in the scope work include:

- Architectural & Interior Design
- Civil Engineering
- Landscape Architecture & Irrigation Design
- Structural Engineering
- Mechanical, Electrical, Plumbing, & Fire Protection Engineering
- Surveying
- Environmental Analysis and Permitting (Wetlands & Species)

The Project is required to achieve LEED Silver Certification.

03 Design Development

Phase Three – Design Development

1. THE CONSULTANT shall prepare an outline specification (CSI div 1 through 26) with product cut sheets per division
2. THE CONSULTANT shall prepare exterior colored elevations.
3. THE CONSULTANT shall prepare an interior finishes sample board.
4. THE CONSULTANT shall prepare dimensioned, to scale drawings including base bid and alternate plans:
 - a. Updated floor plan with structural elements, furniture, equipment, and cabinetry. Plans or specifications to include infrastructure, furniture and fixed equipment such and the like, integration of that system with the building and furnishings design recommendations.
 - b. Structural foundation and framing plans.
 - c. Exterior elevation views of the building indicating materials of exterior envelope. North, south, east, west.
 - d. Building Sections.
 - e. Wall Sections.
 - f. Roof plan with all penetrations and equipment.
 - g. Typical roof detail.
 - h. Interior finish schedule.
 - i. Door and Window Schedule.
 - j. Reflected ceiling plan with all ceiling mounted systems.
 - k. Life safety plan with updated building code summary.
 - l. Civil site drawings.
 - m. Landscape and irrigation drawings.
 - n. Electrical, communication, lighting and A/V drawings.
 - o. Lighting design plan with photometric analysis.
 - p. Lightning protection plan.
 - q. Electrical and communications site plan.
 - r. Enlarged room plans with furniture and equipment layouts – mechanical, electrical, communications, restrooms and showers, lobby, rooms with cabinetry, plumbing, lobby and special finishes or special equipment.
 - s. HVAC, plumbing and fire protection drawings.
 - t. Building automation drawings.
 - u. Generators and redundant systems plans.
5. THE CONSULTANT shall conduct Meetings with the District, vendors and agencies as necessary to design and permit the building. THE CONSULTANT shall prepare Meeting Agenda and Meeting Reports for each encounter. The District will schedule District-CONSULTANT meetings. THE CONSULTANT will schedule vendor and agency meetings such that the District may be present at all meetings. The quantity of meetings will be on the basis of the preliminary schedule and includes additional meetings as

Task 2 DD-CA Design Services

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necessary due to specific issues or needs as they arise.

Phase Four – Construction Documents

1. THE CONSULTANT shall provide all required documents for building permit application and jurisdictional agency submittals. Parrish Fire District infrastructure and building permits and any others required for the construction of the project. THE CONSULTANT shall respond to agencies and revise the construction documents as necessary to obtain agency approvals and for construction permits. The cost of jurisdictional agency application, registration, review and permitting fees are included with the exception of impact fees and building permit fees.
2. THE CONSULTANT shall prepare technical specifications division 1 through 26 – Construction Specification Institute format.
3. THE CONSULTANT shall revise the construction documents as directed by the OWNER.
4. THE CONSULTANT shall prepare dimensioned, to scale drawings:
 - a. Updated floor plan with structural elements, furniture, equipment, and cabinetry.
 - b. Plans or specifications to include infrastructure for the furniture and fixed equipment and the like.
 - c. Structural foundation and framing plans.
 - d. Structural details.
 - e. Exterior elevation views of the building indicating materials of exterior envelope. North, south, east, west.
 - f. Building Sections.
 - g. Wall Sections.
 - h. Building envelope and penetration details. Scale: 1 1/2 in = 1 ft.
 - i. Roof plan with all penetrations and equipment.
 - j. Roof detail. Scale: 3 in = 1 ft.
 - k. Interior finish schedule.
 - l. Door and Window Schedule.
 - m. Door and window details. Scale: 1 1/2 in = 1 ft.
 - n. Commercial kitchen plan.
 - o. Commercial kitchen details.
 - p. Reflected ceiling plan with all ceiling mounted systems.
 - q. Ceiling and wall details. Scale: 1 1/2 in = 1 ft.
 - r. Life safety plan with building code summary.
 - s. Civil site drawings.
 - t. Landscape and irrigation drawings.
 - u. Electrical, security, lighting and communications site plan.
 - v. Enlarged room plans with furniture and equipment layouts – mechanical, electrical, communications, restrooms and showers, lobby, rooms with cabinetry, plumbing, special finishes or special equipment.
 - w. Interior elevation views.
 - x. Cabinet details.
 - y. HVAC, plumbing and fire protection drawings.
 - z. Building automation drawings.
 - aa. Generator and redundant systems drawings.

bb. Lightning protection drawings.

5. THE CONSULTANT shall conduct Meetings with the District, vendors and agencies as necessary to design and permit the building. The CONSULTANT shall attend the PREBID conference. THE CONSULTANT shall prepare Meeting Agenda and Meeting Reports for each encounter. THE CONSULTANT will schedule vendor and agency meetings such that the District may be present at all meetings. The quantity of meetings will be on the basis of the preliminary schedule includes additional meetings as necessary due to specific issues or needs as they arise.

Construction Administration

1. THE CONSULTANT shall conduct bi-weekly and as needed field visits. In addition to the architect visits, security consultant, hardware consultant, electrical engineer, communications consultant, structural engineer and mechanical engineer will make periodic visits appropriate to their discipline. THE CONSULTANT shall prepare a field report for each visit. The number of visits is based on twice monthly visits for the duration of the construction schedule including the period between substantial completion and final completion.
2. THE CONSULTANT shall coordinate to the best of their ability within the standard of care, with the Contractor, District and District IT Division in locating all piping, conduit, infrastructure, structured cable and devices prior to concrete pours, drywall or other concealment with special attention being called to the power, security and communications systems.
3. THE CONSULTANT shall review contractor shop drawings and submittals.
4. THE CONSULTANT shall review contractor applications for payment.
5. THE CONSULTANT shall conduct a Substantial Completion report and prepare certificate with punch list of deficiencies.
6. THE CONSULTANT shall attend bi-weekly safety/ construction meetings with the District, Contractor, vendors and agencies and as necessary to administer the construction of the building. Contractor shall prepare Meeting Agenda and Meeting Reports for each encounter. The District will schedule the meetings and be present at all meetings. Additional site visits as necessary due to the stage of construction or specific issues that occur are also included.
7. THE CONSULTANT shall conduct a Final Completion inspection and verify Contractor's final pay application.
8. THE CONSULTANT shall prepare record documents based on receipt of Contractor's as-built documentation. Record drawings shall be prepared, utilizing a computer aided drafting program from Contractor's handwritten plan mark-ups of changes to the drawings. Record drawings to be submitted to the District in PDF and ACAD 2014 format.
9. THE CONSULTANT shall conduct a pre one year warranty walk.

Professional Services Compensation

PROJECT PHASE	STATUS	FEES
Pre-Design	COMPLETED	\$ COMPLETED
Schematic Design	COMPLETED	\$ COMPLETED
Design Development		\$ 143,112.54
Construction Documents		
90% Construction Documents		\$ 157,306.04
100% Construction Documents		\$ 84,462.92
Construction Contract Admin.		\$ 125,780.75
TOTAL FEES		\$ 510,662.24
Bidding & GMP Confirmation to be billed as an allowance		\$ 47,684.92

TOTAL LUMP SUM COMPENSATION (excluding allowance for bidding and permitting)

100% \$ 510,662.24

***Project to be billed by percentage of completed work, on a monthly basis.**

1. Per phased **submittal**, the Consultant will submit documents as follows to the City:
 - a. 8 ½ x 11 spec books, cut sheets, cost estimates, calculations, project requirements, manual, etc. (PDF files)
 - b. Full size sets of drawings 30x42 (PDF files)
2. The Consultant will submit prints as necessary to jurisdictional agencies.
3. The Consultant will submit Record Documents:
 - a. 8 ½ x 11 spec books, cut sheets, cost estimates, calculations, project requirements, manual, etc. (PDF files)
 - b. Full size sets of drawings 30x42 (PDF files)

CITY OF PALM COAST FIRE STATION 22 & 26

EXHIBIT E: CONSULTANT HOURLY RATES

Dec-23

SCHENKELSHULTZ	
Partner	\$275.00
Principal	\$225.00
Project Director / Manager	\$200.00
Project Architect III	\$175.00
Project Architect II	\$150.00
Project Architect I	\$120.00
Senior Interior Designer	\$175.00
Designer IV	\$160.00
Designer III	\$150.00
Designer II	\$125.00
Designer I	\$115.00
Specification Writer	\$160.00
Construction Administration	\$180.00
Administration	\$90.00

BBM STRUCTURAL	
Principal	\$211.00
Associate	\$192.00
Project Manager	\$173.00
Senior Project Engineer	\$160.00
Project Engineer	\$144.00
Sr. BIM Technician	\$119.00
BIM Technician	\$111.00
Construction Admin./Inspector	\$129.00
Clerical	\$64.00

OCI CONSULTING ENGINEERS	
Principal	\$210.00
Registered Professional Engineer	\$195.00
Senior Project Manager / Engineering	\$170.00
IT / AV Systems Design Engineering	\$160.00
Lighting Design Engineering	\$160.00
Project Engineer	\$135.00
Senior Designer	\$110.00
Designer	\$90.00
CAD Operator	\$80.00
Clerical	\$70.00

BECTHOL ENGINEERING	
Principal Geotechnical Engineer	\$190.00
Senior Project Engineer	\$130.00
Senior Engineering Designer	\$90.00
Clerical Services	\$60.00

ZEV COHEN			
Principal	\$230.00	Engineer I	\$105.00
Department Director	\$215.00	Landscape Architect I	\$105.00
Senior Professional Engineer	\$190.00	Planner I	\$105.00
Senior Registered Landscape Architect	\$180.00	Designer	\$ 95.00
Project Manager	\$180.00	CADD Manager	\$120.00
Senior Planner	\$160.00	Senior CADD Technician	\$110.00
Senior Biologist/Env. Scientist/GIS Analyst	\$170.00	CADD Technician	\$100.00
Professional Engineer	\$155.00	Construction Administration Manager	\$145.00
Registered Landscape Architect	\$150.00	Construction Administrator	\$120.00
Environmental Scientist III/GIS Specialist III	\$135.00	Construction Administration Technician	\$100.00
Engineer III	\$135.00	IT Manager	\$105.00
Landscape Architect III	\$135.00	Certified Soil Scientist	\$170.00
Planner III	\$130.00	Certified Arborist	\$110.00
Environmental Scientist II/GIS Specialist II	\$115.00	Landscape Designer	\$ 95.00
Engineer II	\$115.00	Engineering Technician	\$ 85.00
Landscape Architect II	\$115.00	Biological Technician	\$ 70.00
Planner II	\$115.00	Technical Assistant	\$ 70.00
Senior Designer	\$110.00	Senior Clerical	\$ 65.00
Environmental Scientist I/GIS Specialist I	\$105.00	Clerical	\$ 55.00

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

Department CITY ADMINISTRATION Division	Amount Account #
Subject: AGENDA WORKSHEET AND CALENDAR	
Presenter: Kaley Cook, City Clerk	
Attachments: 1. Worksheet 2. Calendar	
Background:	
Recommended Action:	

	JANUARY 16, 2024 BUSINESS MEETING	PRESENTER
Proclamation	Human Trafficking Awareness Month	Cook
Proclamation	Stalking Awareness Month	Cook
Ordinance 2nd	Old Kings Village Future Land Use Map	Papa
Ordinance 2nd	Old Kings Village Rezoning	Hoover
Ordinance 2nd	Belle Terre & US 1 Future Land Use Map	Papa
Ordinance 2nd	Belle Terre & US 1 Rezoning	Hoover
Ordinance 2nd	Street Renaming - Richenbacker Drive to Rickenbacker Drive	Smith
Ordinance 1st	Town Center Planned Unit Development Amendments	Papa
Ordinance 1st	Infill Lots	Garganese
Resolution	Town Center Development of Regional Impact Amendments	Papa
Resolution	State Road 100 DRI Abandonment	Nguyen
Resolution	Easement Agreement - Fire Station 25 and Southern Recreation Center	Cote
Resolution	Piggyback for Fleet Related Purchases	Mancill
Resolution	Piggyback for Lawn Mower Purchases	Mancill
Resolution	Piggyback for Pest Control Services	Mancill
Resolution	Piggyback for Fleet Tools and Supplies	Mancill
Resolution	Master Services Agreement for a New Odor Control Unit for an Old Kings Road Pump Station	Melley
Resolution	Piggyback for EMS Medical Supplies	Berryhill
Resolution	Piggyback for Lifescan	Berryhill
Resolution	Cigar Lake Reuse Filter Capacity Upgrades and Installation	Ashburn
Resolution	Concession Lease Agreement - Southern Recreation Center	Hirst
Resolution	Residential Study for Speed Limit Posting	Cote
Resolution	Fire Station 26 Grant Agreement - Pond Design Fee Amendment FS22 & FS26	Gebo
	FEBRUARY 6, 2024 BUSINESS MEETING	PRESENTER
Resolution	Construction Management Agreement for Matanzas Woods/Palm Coast Parkway Connector Loop	Cote
Resolution	Florida Department of Transportation (FDOT) Agreement for Matanzas Woods/Palm Coast Parkway Connector Loop Phase II	Cote
Resolution	FPL Relocation Expenses for Matanzas Woods/Palm Coast Parkway Connector Loop	Cote
Ordinance	Vessel Platforms	Grossman
Resolution	Colbert Landings Phase I	Lens/Leap
Presentation	Safety Calendar	Mini
Ordinance 2nd	Landings Community Development District Boundary Expansion	Nguyen
Ordinance 2nd	Town Center Planned Unit Development Amendments	Papa
	FEBRUARY 13, 2024 WORKSHOP MEETING	PRESENTER
Presentation	Highlands County Cybersecurity	Akins
Presentation	Request For Proposals - Legal Services Update	Johnston
Presentation	Update for Development/Application Fees	Nguyen/Tyner
	FEBRUARY 20, 2024 BUSINESS MEETING	PRESENTER
Ordinance 2nd	Vessel Platforms	Grossman
Proclamation	Teen Dating Violence Awareness Month	Cook
Appointment	Citizens Advisory Committee(CAC) and Bicycle and Pedestrian Advisory Committee(BPAC)	Smith
Ordinance	Utility Rates	Flanagan

	MARCH 5, 2024 BUSINESS MEETING	PRESENTER
Ordinance 2nd	Utility Rates	Flanagan
	MARCH 12, 2024 WORKSHOP MEETING	PRESENTER
	MARCH 19, 2024 BUSINESS MEETING	PRESENTER
Ordinance 1st	Sign Code	Lens/Grossman
Resolution	Annual Comprehensive Financial Report	Boone
	MARCH 26, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	10 Year Capital Improvement Forecast	Alves
Presentation	Strategic Action Plan Evaluation Workshop #1	Alves
	APRIL 2, 2024 BUSINESS MEETING	PRESENTER
Ordinance 2nd	Sign Code	Lens/Grossman
	APRIL 9, 2024 WORKSHOP MEETING	PRESENTER
	APRIL 16, 2024 BUSINESS MEETING	PRESENTER
	APRIL 23, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	Review of Year-To-Date Budget	Alves
Presentation	Strategic Action Plan Evaluation Workshop #2	Alves
Presentation	Department Overview: Community Development, Fire, Parks & Recreation	Departmental
	MAY 7, 2024 BUSINESS MEETING	PRESENTER
Presentation	Citizens Academy Graduation	Kershaw
Resolution	Strategic Action Plan Priorities	Alves
	MAY 14 , 2024 WORKSHOP MEETING	PRESENTER
	MAY 21, 2024 BUSINESS MEETING	PRESENTER
	MAY 28, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	Flagler County Sheriff's Office	FCSO
Presentation	Department Overview: Utility, Public Works, Stormwater	Departmental
	JUNE 4, 2024 BUSINESS MEETING	PRESENTER
	JUNE 11, 2024 WORKSHOP MEETING	PRESENTER

	JUNE 18, 2024 BUSINESS MEETING	PRESENTER
	JUNE 25, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	Strategic Action Plan Q3 Council Priority Update and Presentation	Alves
Presentation	Revenue Restrictions and Overview of Property Taxes and TRIM	Alves
	JULY 2, 2024 BUSINESS MEETING	PRESENTER
	JULY 9, 2024 WORKSHOP MEETING	PRESENTER
Presentation	Proposed General Fund, Facilities, IT Budget, and TRIM Rate Discussion	Alves
	JULY 16, 2024 BUSINESS MEETING	PRESENTER
	July 23, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	Presentation of Proposed Water and Wastewater Utility, Stormwater, Collection and Sanitation, IT Enterprise & Building Fund Budgets	Departmental
	AUGUST 6, 2024 BUSINESS MEETING	PRESENTER
	AUGUST 13, 2024 WORKSHOP MEETING	PRESENTER
Presentation	Capital, Fleet, Special Revenue, Proposed Budget for All Remaining Funds	Departmental
	AUGUST 20, 2024 BUSINESS MEETING	PRESENTER
	AUGUST 27, 2024 SPECIAL BUDGET WORKSHOP	PRESENTER
Presentation	Final Proposed Budget for FY 2024 (All Funds)	Alves
	SEPTEMBER 3, 2024 BUSINESS MEETING	PRESENTER
Resolution	Certifying the 2024 Primary Election Results	Cook
	SEPTEMBER 5, 2024 SPECIAL BUSINESS MEETING - TENTATIVE BUDGET	PRESENTER
Resolution	Tentative Millage Rate Resolution and Budget Resolution	Alves
	SEPTEMBER 10, 2024 WORKSHOP MEETING	PRESENTER
	SEPTEMBER 17, 2024 BUSINESS MEETING	PRESENTER
	SEPTEMBER 18, 2024 SPECIAL BUSINESS MEETING - FINAL BUDGET HEARING	PRESENTER
Resolution	Final Millage Rate Resolution, Budget Resolution, Fleet Resolution	Alves

	OCTOBER 1, 2024 BUSINESS MEETING	PRESENTER
	OCTOBER 8, 2024 WORKSHOP MEETING	PRESENTER
	OCTOBER 15, 2024 BUSINESS MEETING	PRESENTER
	NOVEMBER 5, 2024 BUSINESS MEETING	PRESENTER
Presentation	Citizens Academy Graduation	Kershaw
	NOVEMBER 12, 2024 WORKSHOP MEETING	PRESENTER
	NOVEMBER 19, 2024 BUSINESS MEETING	PRESENTER
	DECEMBER 3, 2024 BUSINESS MEETING	PRESENTER
Resolution	Approving the Final 2024 General Election Results	Cook
Oath	Oath of Office for Newly Elected Council Members	Cook
Appointment	Vice Mayor Appointment	Cook
Appointment	Council Liaison Appointments	Cook
	DECEMBER 10, 2024 WORKSHOP MEETING	PRESENTER
	DECEMBER 17, 2024 BUSINESS MEETING	PRESENTER
	Future	PRESENTER
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	Indian Trails Sports Complex Reclaim Water Extension	Blake
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
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 Whiteview Parkway Improvements	Cote
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	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	Occupational Services	Fuller
Resolution	Grant Agreement for Fire Station 26	Gebo
Resolution	Palm Coast Parkway Banners - Childhood Cancer Awareness	Gonzalez
Resolution	Code Board Attorney Services	Grossman
Ordinance 1st	Animal Control Amendment	Grossman
Ordinance	No Smoking Ordinance	Hirst
Resolution	Old Kings Multi Family Master Site Plan Tier 3	Hoover
Ordinance	Colbert Lane Master Plan Development	Hoover
Resolution	Somerset Phase I - Final Plat	Leap
Resolution	Matanzas Cove - Final Plat	Leap
Resolution	Flagler Village Phase I - Final Plat	Leap
Resolution	Old Kings Storage Facility Technical Site Plan	Lens
Resolution	Wireless Communication Facility - 7 Clubhouse Drive	Lens
Resolution	Cell Tower Master Plan Modification	Lens
Ordinance	Sawmill Branch Phase 6	Lens
Resolution	Carlough - 28 Llestone Path	Lens/Gonzalez
Resolution	Sawmill Branch Phase 2B	Lens/Leap
Resolution	Flagler Village Final Plan	Lens/Leap
Resolution	Reverie at Palm Coast Phase II	Lens/Leap
Resolution	Hammock at Palm Harbor	Lens/Leap
Resolution	Seminole Palms 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 Promenade	Nguyen
Resolution	The Station at Town Center - TH - Town Center Tracts 18B & 18C	Nguyen/Lens
Ordinance	Lakeside Estates Future Land Use Map	Papa
Ordinance	Lakeside Estates Master Planned Development Amendment	Hoover
Ordinance	Town Center Master Planned Development	Papa
Resolution	Pre-Annexation Agreement for Airport Commons II	Papa
Resolution	Transportation Impact Fee Study	Papa/DeLorenzo
Resolution	Legacy at Town Center - Tract 18 Technical Site Plan Tier 3	Planning
Resolution	800 Matanzas Woods Parkway Easement	Smith
Resolution	Code Hearing Officer Contract	Smith
Resolution	Forestar Contracts	Smith



Meeting Calendar for 1/16/2024 through 4/30/2024

1/16/2024 9:00 AM

City Council Business Meeting
City Hall

1/17/2024 5:30 PM

Planning & Land Development Regulation Board
City Hall

1/25/2024 5:00 PM

Beautification and Environmental Advisory Committee
City Hall

2/6/2024 6:00 PM

City Council Business Meeting
City Hall

2/7/2024 10:00 AM

Code Enforcement Board
City Hall

2/13/2024 9:00 AM

City Council Workshop
City Hall

2/20/2024 9:00 AM

City Council Business Meeting
City Hall

2/21/2024 5:30 PM

Planning & Land Development Regulation Board
City Hall



Meeting Calendar for 1/16/2024 through 4/30/2024

2/22/2024 5:00 PM

Beautification and Environmental Advisory Committee
City Hall

3/5/2024 10:00 AM

Animal Control Hearing
City Hall

3/5/2024 6:00 PM

City Council Business Meeting
City Hall

3/6/2024 10:00 AM

Code Enforcement Board
City Hall

3/12/2024 9:00 AM

City Council Workshop
City Hall

3/19/2024 9:00 AM

City Council Business Meeting
City Hall

3/20/2024 5:30 PM

Planning & Land Development Regulation Board
City Hall

3/26/2024 9:00 AM

City Council Special Budget Workshop
City Hall



Meeting Calendar for 1/16/2024 through 4/30/2024

3/28/2024 5:00 PM

Beautification and Environmental Advisory Committee
City Hall

4/2/2024 6:00 PM

City Council Business Meeting
City Hall

4/9/2024 9:00 AM

City Council Workshop
City Hall

4/16/2024 9:00 AM

City Council Business Meeting
City Hall

4/17/2024 5:30 PM

Planning & Land Development Regulation Board
City Hall

4/23/2024 9:00 AM

City Council Special Budget Workshop
City Hall

4/25/2024 5:00 PM

Beautification and Environmental Advisory Committee
City Hall